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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 288.

JOHN W. SCARBOROUGH, TUTOR OF ALMIRA RICHARDSON, MINOR AND ONLY CHILD OF MRS. SARAH RICHARDSON, DECEASED, PLAINTIFF IN ERROR,

vs.

JOHN FRANK PARGOUD.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 29, 1880.

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INDEX.

PROCEEDINGS IN DISTRICT COURT, OUACHITA COUNTY.

	Original.	Print.
Petition	1	1
Copy of note	5	2
Act of sale and mortgage	6	2
Order of seizure and sale	10	4
Notice	12	5
Sheriff's return	15	6
Writ of seizure and sale	15	6
Sheriff's notice of seizure	20	8
Notice to appoint appraiser	21	8
Notice to survey	21	8
Petition for appeal	22	9
Order for appeal	26	11
Notice of appeal	26	11
Appeal bond	28	12
Clerk's certificate	29	12

PROCEEDINGS IN SUPREME COURT OF LOUISIANA.

Petition of appellee for order requiring recorder to produce original account of sale	30	12
Opposition of appellant to order	31	13
Motion to dismiss appeal	33	14
Assignment of errors	35	15
Petition for rehearing	42	17
Supplemental argument on petition for rehearing	50	20
Opinion on motion to dismiss	54	22

Opinion on the merits	55	22
Dissenting opinion	56	22
Opinion on motion for order on recorder	59	24
Dissenting opinion	60	24
Opinion on petition for rehearing	61	24
Minute entries	69	27
Judgment	69	27
Petition for writ of error	71	29
Order allowing writ of error	73	29
Bond	74	30
Writ of error	76	31
Citation	77	31
Clerk's certificate	79	32
Original citation	81	32
Assignment of errors	84	33

1 No. 434. Filed Jan'y 22nd, 1874.
JNO. H. DINKGRAVE, *Clerk S. C.*

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } Order of seizure & sale.

Fourteenth judicial circuit, parish of Ouachita, Hon. Robert Ray, judge.

Plff' petition.

To the Hon. Robert Ray, judge of the 14th district court, in and for the parish of Ouachita, State of Louisiana:

The petition of John Frank Pargoud, a resident of your said parish and State, respectfully represents that Mrs. Sarah Richardson, a widow over twenty-one years of age, and of the same residence, is legally and justly indebted unto him in the sum of ten thousand four hundred dollars ($10,000.00), with 8 per cent. per annum interest from December 27th, 1871, in manner as follows: Petitioner states that the said Mrs. Sarah
2 Richardson, at Monroe, La., December 27th, 1871, made, executed, and delivered to your petitioner her certain promis'ory note, whereby she promised to pay to the order of your petitioner, on the 1st of January, 1873, the sum of ten thousand four hundred dollars, with eight per cent. per annum interest from date, all of which will more fully appear by reference to said note hereto annexed and made a part hereof. Said note is duly paraphed ne varietur by the notary who passed the act of mortgage, to identify it therewith, which is hereinafter refer'ed to.

Petitioner avers amicable demand without effect, and due presentment of said note for payment, which was refused, at the office of Ernest & Co., in the city of New Orleans. Your petitioner avers that said note was given for a part of the purchase-money, to wit, twenty-eight thousand four hundred dollars, of the following immovable property, to wit: A certain tract of land composing a cotton plantation known as Ingleside, situated and lying on both sides of Bayou de Siard, in the parish of Ouachita, in the State of Louisiana, described as all that part of the tract of land formally owned and known as the Kellam tract of land, which lies north of the Vicksburg,
3 Shreveport and Texas Railroad (now North Louisiana and Texas Railroad), upon which the vendee now resides, bounded above by lands of E. W. Warfield, on the south by Vicksburg, Shreveport and Texas Railroad (now North Louisiana & Texas Railroad), and on the west by land of vendor (now W. J. Q. Baker), containing twelve hundred and fifty acres, more or less, being same land acquired at sheriff's sale by vendor as per act dated Sept. 8th, 1868, and recorded in notarial book R, page 559, together with all the buildings and improvements thereon, and forty-two mules, and all farming implements now on said land, all of which will more fully appear by reference to a duly certified copy of said act hereto attached & made a part hereof, said act having been passed before C. Delery, recorder & ex officio notary in and for the parish of Ouachita, on the 27th day of Dec., 1871. Petitioner avers that there are four other promis'ory notes given for said purchase-money, each for forty-

five hundred dollars, payable respectively on the 1st of January, 1875, 1876, 1877, and 1878. Petitioner avers that an order to secure the full and punctual payment of said note attached to the petition, & the
4 other notes, together with the interest accruing or any costs which may be incurred in the collection of the same, be it in attorneys' fees or otherwise, the said Mrs. Sarah Richardson, before C. Delery, recorder of Ouachita Parish, on the 27th day of December, 1871, by public act specially mortgaged and hypothecated in favor of your petitioner, the vendor, or any bona fide holder or owner of said note, the property above described and set forth, with any improvements that might be put thereon, promising not to alienate or incumber said property to the prejudice of said mortgage, all of which will more fully appear by reference to a duly certified copy of said act of mortgage, contained in said act of sale, hereto attached and made a part hereof. Petitioner avers that he is still the owner and holder of said note, & that Mrs. Sarah Richardson is in possession of said property. Petitioner avers that the other notes above described, for forty-five hundred dollars each, & due respectively 1st Jan'y, 1875, 1876, 1877, 1878, are secured by the same mortgage as the note sued on.

Wherefore, the premises considered, your petitioner prays that
5 said mortgage be made executory in all its parts; that an order of seizure & sale issue directing the seizure & sale of the mortgaged property described and set forth in this petition and in the act of sale and mortgages, for cash, to make the sum of ten thousand four hundred dollars, with eight per cent. interest per annum thereon from 27th December, 1871, the amount of the note sued on, and for all costs, including one dollar & fifty cents for the annexed copy of act of sale and mortgage, and fees as stipulated in the act of mortgage, and on terms of credit to meet the falling due of the other notes for forty-five hundred dollars each, due on 1st Jan'y, 1875, 1876, 1877, and 1878.

He further prays that the said Mrs. Sarah Richardson be served with all due and legal notices as are made in such cases, and for general relief.

S. D. McENERY, *Attorney.*

Note.

$11,250.00.]
10,400.00—850.50 interest.]

MONROE, LA., *December 27th*, 1871.

On the 1st of January, 1873, after date, I promise to pay to the order of J. Frank Pargoud ten thousand four hundred ($10,400) dollars, for value received, with 8 per cent. per annum interest from date.

SARAH RICHARDSON.

6 By agreement of drawer and endorser, this note is hereby made payable at the office of Ernest & Co., New Orleans.

SARAH RICHARDSON.
J. FRANK PARGOUD.

Done & signed before me Feb'ry 3rd, 1872.

CHAS. DELERY, *Recorder.*

Act of sale & mortgage.

STATE OF LOUISIANA,
Parish of Ouachita:

Be it known that on this the 27th day of December, A. D. eighteen hundred and seventy-one, before me, Charles Delery, recorder, and ex officio notary public in and for the said parish and State, personally came and appeared John Francis Pargoud (unmarried), a resident of said parish, who declared and acknowledged that, for the price hereinafter expressed, he has sold, conveyed, and delivered, and by these presents does sell, bargain, transfer, assign, and set over unto Mrs. Sarah Richardson (widow), of same residence, present and accepting this sale for herself, her heirs, and assigns, the following property, to wit:

7 A certain tract of land, composing a cotton plantation, known as "Ingleside," situate and lying on both sides of Bayou de Siard, in said parish of Ouachita, in said State, described as "all that part of a tract of land formerly owned and known as the Kellam tract of land, which lies north of the Vicksburg, Shreveport and Texas Railroad (now North Louisiana and Texas Railr.), upon which the vendee now resides, bounded above by *by* lands of E. W. Warfield, on the south by the Vicksburg, Shreveport & Texas Railroad (now North La. and Texas R. R.), and on the west by land of vendee, containing twelve hundred & fifty acres, more or less, being same land acquired at sheriff's sale by vendor, as per act dated Sept. 8th, 1868, and recorded in notarial book R, page 559, together with all the buildings & improvements thereon, and 42 mules, and all farming implements now on said land. This vendor only sells such title to said property as he acquired from the sheriff in said above-mentioned act of sale to him. To have and to hold the said land, &c., unto the said purchaser, her heirs and assigns, forever. The parties to this act agree to dispense with the production of the certificate of mortgage required by article 3364 of the civil code of this State, and exonerate me from any liability in the premises. The price for which the above sale

8 is made is the sum of twenty-eight thousand four hundred dollars ($28,400.00), for which the said Sarah Richardson has this day signed and executed her five several promissory notes, whereby she promised to pay to the order of J. Frank Pargoud, first, ten thousand four hundred dollars on the 1st of January, 1873, and the balance in four equal annual installments of forty-five hundred dollars each, respectively on the 1st of January, 1875, 1876, 1877, & 1878, with 8 per cent. interest per annum on each of said notes from date hereof, which notes I have this day paraphed "ne varietur," in order to identify them more fully with this act.

Now, therefore, in order to secure the full and punctual payment of said notes, together with the interest accruing thereon, or any costs which may be incurred in the collection of the same, be it in attorney's fees, or otherwise, the said Mrs. Sarah Richardson declared that she specially mortgages and hypothecates in favor of the vendor or any bona fide holder or owner of said notes the property herein conveyed, with any improvements which may be put thereon, and promises not to alienate or incumber said property to the prejudice of this mortgage.

Thus done and passed, in the presence of John W. Scarborough & Francis A. Hall, witnesses, of lawful age, and domiciliated in this parish, who

hereunto sign their names, together with the said parties and me, the
9 said recorder, *who hereunto sign their names, together with the said parties and me, the said recorder*, on this 27th day of December, in the year of our Lord one thousand eight hundred and seventy-one. The figures "1874" on second page were erased and "& 1878" interlined in lieu thereof before signing this *this* act.

J. FRANK PARGOUD.
SARAH RICHARDSON.

JNO. W. SCARBOROUGH.
F. A. HALL.

CHAS. DELERY, *Recorder.*

(Endorsed:) The personal property is valued herein at $11,000, hence $17's worth of s'ps.

C. DELERY, *R.*

Filed December 27th, A. D. 1871, and duly recorded in notarial book T, page 410 & 411, and in mortgage book I, page 354, 355, & 356. In testimony whereof I hereunto sign my name and affix my seal of office, the date above filed.

[SEAL.] CHAS. DELERY, *Recorder.*

STATE OF LOUISIANA,
Parish of Ouachita:

I, Hypolite Filhiol, recorder in and for said parish and State, do hereby certify that the above and foregoing is a true copy of the original on file and of record in this office, together with the recorder's certificate of filing and recording endorsed thereon, and I do further certify that in-
10 ternal rev. stamps of the United States of the value of seventeen dollars, are affixed to the original, and stamps duly cancelled. In testimony whereof I hereunto sign my name officially and affix my seal of office on this 15th day January, A. D. 1873.

H. FILHIOL, *Recorder.*

Order.

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } Order of seizure & sale.

14th district court, parish of Ouachita.

By reason of the foregoing petition, the law, and the authentic evidence annexed to the same, it is ordered that the prayer of the petitioner be granted; that an order of seizure & sale issue as prayed for, & that the mortgage referred to in the petition, & the annexed certified copy of act of sale & mortgage be made executory in all its parts, & that after all due and legal notices and delays a writ of seizure & sale issue according to law & the mortgaged property, to wit: "A tract of land composing a cotton plantation, known as Ingleside, situate and lying on both sides of Bayou de Siard, in said parish of Ouachita, in said State of Louisiana, described as
11 all that part of the tract of land formerly owned and known as the Kellam tract of land, which lies north of the Vicksburg,

Shreveport and Texas Railroad (now North Louisiana and Texas Railroad), upon which the vendee now resides, bounded above by lands of E. W. Warfield, on the south by the Vicksburg, Shreveport and Texas Railroad (now North Louisiana and Texas Railroad), and on the west by lands of vendor (now by W. J. Q. Baker), containing twelve hundred and fifty acres, more or less, being same land acquired at sheriff's sale by vendor, as per act dated Sept. 8th, 1868, and recorded in notarial book R, page 559, together with all the buildings and improvements, and 42 mules (forty-two), and all farming implements now on said land," the property described and set forth in the act of mortgage, after all due & legal notices, appraisements, and advertisements, be seized and sold for cash to make the sum of ten thousand four hundred dollars, with 8 per cent. interest per annum thereon from 27th December, 1871, and all costs, and, to wit, the , and on terms of credit to meet the falling due of the notes dated December 27th, 1871, each for the sum of forty-five hundred dollars, due respective' 1st Jan'y, 1875, 1876, 1877, 1878, with 8 per cent. interest per annum from date. It is further ordered that Mrs.
12 Sarah Richardson be served with all notices required by law.

Done & signed in chambers this 17th day of January, 1873.

ROBERT RAY,
Judge 14th Dist.

Filed 17 January, 1873. J. Ennemoser, clerk d. c.

Notice.

14th judicial court, parish of Ouachita.

J. F. PARGOUD
vs.
MRS. SARAH RICHARDSON.

The State of Louisiana to Mrs. Sarah Richardson, of the parish of Ouachita:

You will please take notice that an order of seizure & sale has been obtained against you in the above-entitled cause in our said court, and is in words and figures following, to wit: By reason of the foregoing petition, the law, and the authentic evidence annexed to the same, it is ordered that the prayer of the petition be granted; that an order of seizure & sale issue as prayed for, & that the mortgage referred to in the petition, & the annexed certified copy of act of sale and mortgage be made executory in all its parts, & that after all due and legal notice & delays a writ of seizure
13 and sale issue according to law, and the mortgaged property, to wit:

"A tract of land composing a cotton plantation, known as Ingleside, situate & lying on both sides of Bayou de Siard, in said parish of Ouachita, in said State of Louisiana, described as all that part of the tract of land formerly owned and known as the Kellam tract of land, which lies north of the Vicksburg, Shreveport & Texas Railroad (now North Louisiana and Texas Railroad), upon which the vendee now resides, bounded above by lands of E. W. Warfield, on the south by the Vicksburg, Shreveport and Texas Railroad (now North Louisiana & Texas Railroad), and on the west by lands of vendor (now by W. J. Q. Baker), containing twelve hundred

and fifty acres, more or less, being same land acquired at sheriff's sale by vendor, as per act dated Sept. 8th, 1868, and recorded in notarial book R, page 559, together with all the buildings and improvements thereon, and forty-two mules, and all farming implements now on said land," the property described and set forth in the act of mortgage, after all due and legal notices, appraisements, and advertisements, be seized and sold for cash, to make the sum of ten thousand four hundred dollars, with 8 per cent. interest per annum thereon from 27th December, 1871, and all costs,
14 and, to wit, the , and on terms of credit to meet the falling due of the notes dated December 27th, 1871, each for the sum of forty-five hundred dollars, due respective' 1st Jan'y, 1875, 1876, 1877, 1878, with 8 per cent. interest per annum from date. It is further ordered that the defendant, Mrs. Sarah Richardson, be served with all notices required by law.

Done & signed in chambers this 17th day of January, 1873.

ROBT. RAY,
Judge 14th District.

Now, therefore, you are further notified that unless the above-mentioned order of seizure and sale is fully complied with, together with all amounts, interests, and costs now due on the same according to law, within three days after the service hereof, a writ of seizure & sale will issue in conformity therewith, commanding the seizure and sale of the property described in said order according to law.

Witness the honorable the judge of our said court, this 17th day of January, 1873.

JULIUS ENNEMOSER,
Clerk D. C.

15 *Sheriff's return.*

Rec'd January 17th, 1873, and on the same day of month and year, made service of a certified copy of the within on Mrs. Sarah Richardson, by handing the same to her in person, in city of Monroe.

B. H. DINKGRAVE, *Sheriff.*

Filed 18th January, 1873. J. Enmemoser, clerk d. c.

Writ of seizure and sale.

THE STATE OF LOUISIANA,
Parish of Ouachita:

Fourteenth judicial district court.

Whereas J. Frank Pargoud, of said parish and State, has filed his petition in the office of the clerk of the 14th district court, in and for the parish of Ouachita, praying for an order of seizure & sale upon the following grounds: That Mrs. Sarah Richardson, a widow over twenty-one years of age, and of the same residence, is legally and justly indebted to him in the sum of ten thousand four hundred dollars ($10,400.00), with eight per cent. per annum interest from December 27th, 1871, in

manner as follows: That the said Mrs. Sarah Richardson, at Monroe, La.,
December 27th, 1871, made, executed, and delivered to J. Frank
16 Pargoud (petitioner) her certain promis'ory note, whereby she
promised to pay him on the 1st of January, 1873, the sum of ten thousand four hundred dollars, with eight per cent. per annum interest from date. Said note is duly paraphed "ne verietur" by the notary who passed the act of mortgage to identify it therewith, which is hereafter referred to. Said note was given for a part of the purchase-money, to wit, twenty-eight thousand dollars, of the following immovable property, to wit: "A certain tract of land composing a cotton plantation, known as Ingleside, situate and lying on both sides of Bayou de Siard, in the parish of Ouachita, in the State of Louisiana, described as all that part of the tract of land formerly known as the Kellam tract of land, which lies north of the Vicksburg, Shreveport and Texas Railroad (now North Louisiana and Texas Railroad), upon which the vendee now resides, bounded above by lands of E. W. Warfield, on the south by the Vicksburg, Shreveport and Texas Railroad (now North Lauisiana and Texas Railroad), and on the west by land of vendor (now W. J. Q. Baker, containing twelve hundred and fifty acres, more or less, being same land
17 acquired at sheriff's sale by vendor, as per act dated Sept. 8th, 1868, and recorded in notarial book R, page 559, together with all the buildings and improvements thereon, and forty-two mules, and all farming implements now on said land."

Petitioner avers that there are four other promis'ory notes given for said purchase-money, each for forty-five hundred dollars respectively, on the 1st of January, 1875, 1876, 1877, 1878. That in order to secure the full and punctual payment of said note, together with the other notes and the interest accuring thereon, or any costs which may be incurred in the collection of the same, be it attorney's fees or otherwise, the said Mrs. Sarah Richardson, before C. Delery, recorder of Ouachita Parish, on the 27th of December, 1871, by public act specially mortgaged and hypothecated, in favor of your petitioner, the vendor, or any bona fide holder or owner of said note, the property above described and set forth.

And whereas the Hon. Robert Ray, judge of the 14th judicial district court, has ordered that an order of seizure & sale issue after due notice according to law, and said notice having issued and been served, and the delay having expired:

18 Now, therefore, you are hereby commanded to seize and sell the property above described, according to law, after due and legal advertisement shall have been made, and after due notice to Mrs. Sarah Richardson, for cash, to make the sum of ten thousand four hundred dollars, with eight per cent. interest thereon from 27th December, 1871, and all costs, and on terms of credit to meet the falling due of the notes dated Dec. 27, 1871, each for the sum of forty-five hundred dollars, due respectively January 1st, 1875, 1876, 1877, and 1878, with eight per cent. interest from date, and make due return thereof as the law directs within seventy days.

Witness my official signature and seal of the court this fourteenth day of February, A. D. 1873.

JULIUS ENNEMOSER, *Clerk.*

Received this writ into office on the fourteenth day of February, 1873, and on the 21st day of February 1873, I signed and took into my possession the following property of the defendant to wit: "A certain tract of land composing a cotton plantation, known as Ingleside, situated and lying
19 on both sides of Bayou de Siard, in the parish of Ouachita, in the State of Louisiana, described as all that part of the tract of land formerly known as the Kellam tract of land, which lies north of the Vicksburg, Shreveport and Texas Railroad (now the N. L. & T. R. R.), upon which the vendee now resides, bounded above by lands owned by *of* E. W. Warfield, on the south by the Vicksburg, Shreveport and Texas R. Road (now the North La. & Texas R. Road), and on the west by lands of vendor (now by W. J. Q. Baker), containing 1,250 acres, more or less, being same lands acquired at sheriff's sale by vendor, as per act dated Sept. 8th, 1868, and recorded in notarial book R, pages 559, together with all the buildings and improvements thereon, & thirty-six mules and all farming implements now on said land," a notice of which seizure is hereto annexed and made part hereof, and having served notices of seizure and notice to appoint an appraiser, and notice to have the land surveyed, I did on the 5th day of March, 1873, advertize said property for sale in the Louisiana Intelligencer, the official journal of Ouachita Parish, sale to take place at the courthouse door, in the city of Monroe, Saturday, April 5th, 1873, it being thirty days from the day of advertisement, and on the said Saturday, the 5th day of April, 1873, the day of sale, before proceeding to the adjudication
20 of said property, I was enjoined from further proceeding, by an injunction from the 14th dist. court.

B. H. DINKGRAVE, *Sheriff.*

Sheriff's notice of seizure.

14th district court, parish of Ouachita.

J. FRANK PARGOUD
vs. } No.
MRS. SARAH RICHARDSON.

State of Louisiana to Mrs. Sarah Richardson:

You will take notice that by virtue of a writ of seizure & sale issued by the hon. 14th district court, in and for the parish of Ouachita, and to me directed in the above-entitled suit, I have seized and taken in my possession the following-described property, to wit: A certain tract of land, composing a cotton plantation known as Ingleside, situated and lying on both sides of Bayou de Siard, in the parish of Ouachita, in the State of Louisiana, described as all that part of the tract of land formerly known as the Kellam tract of land, which lies north of the Vicksburg, Shreveport and Texas Railroad (now the North Louisiana and Texas Railroad), upon which the vendee now resides; bounded above by lands of E. W. Warfield, on the south by the Vicksburg, Shreveport and Texas
21 Railroad (now the North Louisiana and Texas Railroad), and on the west by lands of vendor (now W. J. Q. Baker), containing twelve hundred and fifty acres, more or less, being same lands acquired at sheriff's sale by vendor, as per act dated Sept. 8th, 1868, and recorded

notarial book R, page 559, together with all the buildings and improvements thereon, and thirty-six mules, and all farming implements now on said land, seized as your property, and will be sold according to law, to satisfy said writ of seizure & sale and costs, this 14th day of February, 1873.

B. H. DINKGRAVE, *Sheriff.*

Notice to appoint appraiser.

And you are further notified to be at my office, in the city of Monroe, on Saturday the fifth day of April, 1873, at nine o'clock, a. m., to appoint an appraiser to appraise said property.

B. H. DINKGRAVE, *Sheriff.*

Notice to survey.

14th district court, parish of Ouachita.

J. FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON.

State of Louisiana to Mrs. Sarah Richardson:

You are hereby notified that by virtue of an order of seizure & sale issued by the hon. 14th district court, parish of Ouachita, in the above
22 suit, the land described in said order having been seized, and due notice given of said seizure, you are further notified to have said land surveyed and struck off into lots of not less than ten nor more than fifty, and present plat of the same to me at my office ten days before the date of sale, as the law directs.

B. H. DINKGRAVE, *Sheriff.*

FEBRUARY 14TH, 1873.

Petition for appeal.

14th judicial court, parish of Ouachita.

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } Order of seizure and sale.

To the hon. the judge of the 14th judicial court, in and for the parish of Ouachita, State of Louisiana:

The petition of Mrs. Sarah Richardson, defendant in the above-entitled case, with respect shows that on the 17th of January, eighteen hundred and seventy-three, the plaintiff in the above-entitled case. John Frank Pargoud, filed his petition in said case with the clerk of your said court, and applied to your honor in chambers for an order of seizure & sale against the property of your petitioner as fully described in his petition, documents annexed, as well as in the order of seizure and sale,
23 judgment, or decree rendered on the said application of plaintiff by your honor on the 17th of January, 1873, avers that in said judg-

ment and decree a writ of seizure and sale issued in compl*y*ance with said decree. She avers that said judgment and decree of the 17th January, 1873, rendered in the above-entitled case, is injurious to her; that said decree was rendered & granted improperly and on insufficient evidence. She avers that the evidence on which said judgment & decree was granted was insufficient in this:

The plaintiff in his petition for said decree and order of seizure and sale avers that the note annexed to his petition had been legally demanded at the place of payment at its maturity, and that payment had been refused; of these allegations there was no proof before your honor when you granted said decree; for want of said evidence the judgment, decree, and order should not have been rendered.

That said judgment and order was rendered without proper and sufficient evidence, for the further reason that the internal-revenue laws of the United States at the time the pretended mortgage, a copy of which is attached to pl'ff's petition, and on which the order of seizure and
24 sale was granted, bears date, viz, 27th of December, 1871, required all acts of mortgage, before they could have any binding force, or be used in evidence in any court, or in any judicial or legal proceeding, should have affixed thereto and duly cancelled internal-revenue stamps to the amount of one dollar for every thousand dollars, and one dollar for the fraction over a thousand dollars, of the amount intended to be secured by the act of mortgage.

She avers that the act. annexed to and made part of pl'ff's petition for the order of seizure & sale aforesaid purports to be a mortgage to secure the sum of twenty-eight thousand four hundred dollars, and required before it could be complete, take effect, and be used in evidence the sum of at least twenty-nine dollars worth of internal revenue stamps to be affixed thereto and duly cancelled.

She avers that said amount of stamps was not on said act., nor attached thereto, when the said judgment was rendered, nor was any other legal amount of stamps attached to said act. and duly cancelled on or before the date the said judgment and decree & order of seizure and sale was rendered and granted by your honor. She further avers that you were de-
25 ceived and misled by the pl'ff in this case, and granted said order on insufficient evidence; avers that your honor received said act. in evidence, and gave weight and consideration to it, as a mortgage and authentic evidence of what it contained, with the certificate of the parish recorder at the foot of said act., that the necessary amount of revenue stamps were not attached to the original act. and cancelled.

She therefore avers that said order, judgment, and decree is contrary to the law and the evidence in the case, and injurious to her.

Wherefore she prays that your honor grant her a devolutive appeal from said order, decree, & judgment to the hon'l' supreme court, holding sessions at Monroe (this place), on the first Monday of July, (1874) eighteen hundred and seventy-four; that your hon'r fix the amount of the bond which she must give to entitle her to her said appeal. She also prays that the p'l'ff, John Frank Pargoud, be duly cited to answer said appeal according to law. She also prays for general relief.

MORRISON & FARMER,
Att'ys for Defendant.

26 *Order for appeal.*

14th jud. district court, parish of Ouachita.

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } Order of seizure & sale.

By reason of the foregoing petition, and the law and the evidence being in favor of the defendant, Mrs. Sarah Richardson, it is ordered, adjudged, and decreed that a devolutive appeal be granted from the judgment rendered in this case in chambers on the 17th of January, 1873, as prayed for, returnable to the hon'l' the supreme court of the State of Louisiana, holding sessions at Monroe (this city), on the first Monday of July next, 1874, upon defendant executing her bond, with one or more solvent securities, conditioned according to law, in the sum of one hundred dollars.

Done & signed in chambers this the 18th day of September, 1873.

ROB'T RAY,
Judge 14th District.

Filed 18th Sept., 1873. Julius Ennemoser, clerk d. c.

Notice of appeal.

14th dist. court, parish of Ouachita.

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. }

27 State of Louisiana to John Frank Pargoud, of the parish of Ouachita, greeting:

Whereas Mrs. Sarah Richardson has on the 18th day of Sept., 1873, filed in the clerk's office of said parish her petition of appeal from a certain final judgment rendered in said court against her on an order of seizure and sale in the above-entitled case, which said appeal has been granted and made returnable to the supreme court of the State aforesaid, at its next term, to be held in the city of Monroe on the first Monday of July, 1874, you are, therefore, hereby cited to appear, in person or by attorney, in the said court on the 1st Monday of July, 1874, to answer said appeal.

Witness the Hon. Rob't Ray, judge of the said court, this 19th day of Sept., 1873.

WM. ATKINS, *D'y Clerk.*

Sheriff's return.

Rec'd 19th Sept., 1873, and on the 23 of October, 1873, I made service of a certified copy of this notice of appeal, together with a certified copy of petition, on J. Frank Pargoud in person.

B. H. DINKGRAVE, *Sheriff.*

Filed 24th Octob., 1873. Julius Ennemoser, clerk d. c.

28 *Appeal bond.*

STATE OF LOUISIANA,
Parish of Ouachita:

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } Order seizure & sale.

Know all men by these presents that we, Mrs. Sarah Richardson, as principal, and C. H. Morrison as security, of the parish of Ouachita, are held and firmly bound unto Julius Ennemoser, clerk of the 14th district court, and his successors in office, in the sum of one huudred dollars, lawful money of the United States of America, for the payment whereof well and truly to be made we bind ourselves, our heirs, administrators, and assigns, and each of us in solido, firmly by these presents. Dated and signed this 18th day of September, A. D. 1873.

The condition of the above obligation is such that whereas the above-bounden Mrs. Sarah Richardson has applied for and obtained an order for a devolutive appeal from a certain final judgment rendered against her in our said court on the 17th day of January, A. D. 1873, in the above entitled and numbered suit:

Now, therefore, if the said Mrs. Sarah Richardson shall well and truly prosecute her said appeal with effect, and shall satisfy whatever
29 judgment may be rendered against her, or that the same shall be satisfied out of the proceeds of the sale of her estate, real and personal, if she be cast in her said appeal, then this obligation to be null and void; otherwise to be and remain in full force and effect against principal and security.

SARAH RICHARDSON.
C. H. MORRISON.

Signed in the presence of and approved by—
JULIUS ENNEMOSER,
Clerk D. C.

Filed 18th Sept., 1873. Julius Ennemoser, clerk d. c.

STATE OF LOUISIANA,
Parish of Ouachita:

I, Julius Ennemoser, clerk of the fourteenth judicial district court, in and for the parish of Ouachita, State of Louisiana, hereby certify that the above and foregoing thirty-four pages contain a true, correct, and complete transcript of all the orders and decrees of court, documents filed, and proceedings had in the case of John Frank Pargoud vs. Mrs. Sarah Richardson, order of seizure and sale on the docket of said court.
30 Witness my official signature and seal of office this 25th day of October, A. D. 1873.

[SEAL.] JULIUS ENNEMOSER,
Clerk D. C.

On application for rehearing.—Application to recorder to bring up original act of mortgage.

J. FRANK PARGOUD *vs.* MRS. SARAH RICHARDSON. } Appeal from order, seizure & sale. 14th district court, parish of Ouachita.

Supreme court.

To the hon. supreme court, State of Louisiana:

J. Frank Pargoud, appellee, respectfully represents to your hon'l. court that in the application for a rehearing in the above cause, it is alleged as one of the grounds for the same that the original act of mortgage upon which the order of seizure was granted did not have a sufficient am't of U. S. int. revenue stamps on the same. Appellee respectfully avers that the affixing of said stamps did not constitute any part of the authentic evidence upon which the judge was authorized to issue said order; but if your honors should decree said evidence of the affixing of said stamps authentic and requisite for the issuance of said order, then appellee respectfully shows that after the issuing of the order the necessary amount of stamps was affixed to said act by the U. S. collector for this int. revenue
31 dist., as will appear by reference to said original act; not, however, before your honors that if there was any illegality attaching to said order by reason of a deficiency of stamps, the affixing of the same by said collector by the int. revenue act made the act valid from its inception.

In order that it may be shown to your hon. court that said stamps have been duly placed by said collector on said original act, it is necessary to have the same before the court; wherefore appellee prays your hon. court issue a mandate to the recorder of Ouachita Parish, requiring him to bring before your honors the original act of sale of J. F. Pargoud to Mrs. Sarah Richardson, of the Ingleside plantation, situated in this parish, dated Dec. 27th, 1871, and for general relief.

S. D. MCENERY, *Att'y.*

Filed July 30th, '77. Talbot Stillman, clerk s. c.

Motion opposing order on recorder to produce original act of mortgage.

Supreme court of La. July, 1878.

J. FRANK PARGOUD *vs.* MRS. SARAH RICHARDSON. } Appeal from Ouachita.

The defendant and appellant respectfully opposes the application of the plaintiff for an order on the recorder of Ouachita Parish to produce in this hon. court the original act of mortgage from Mrs. Richardson
32 to J. Frank Pargoud for the following reasons, to wit:

1st. The said original was not offered in evidence in the court below. The supreme court cannot consider any evidence on appeal

which was not offered below. (C. P., 894; 21 A., 666; 4 Rob., 155; 2 Rob., 283; 3 M., 506.)

2nd. The alleged restamping of the notes sued on is admitted in said motion to have been made since this appeal was filed. The supreme court can only decide the same matter which was decided by the court below. To admit now new matter which was not in existence when the order of seizure and sale was granted would require this court to consider and decide the regularity, legality, and effect of the new matter, and as to that matter this court would be taking original jurisdiction. (3 Rob., 132; 28 A., 273; C. P., 895; 16 La., 99; 3 Rob., 237; 17 A., 319; 18 A., 283; 20 A., 372, 565.)

3d. The only question which the supreme court can pass upon on appeal is: Was the order of seizure & sale properly granted by the district court upon the state of facts as they then existed, as shown exclusively by the evidence submitted to the district judge when he signed the order? (6 Rob., 58; 1 A., 279; 18 A., 80; 21 A., 32, 52; 12 A., 167; 6 A., 389; State vs. Schmidt, 131, 267.) The supreme court cannot determine whether the order would have been properly granted if the plaint-
33 iff had submitted more or different evidence to the district judge.

Wherefore the appellant prays this hon. court to refuse the order asked for by the appellee and to try this case upon the transcript as filed.

W. W. FARMER, *Attorney.*

Filed July 1st, 1878. Talbot Stillman, clerk s. c.

Motion to dismiss appeal.

In the supreme court of Louisiana, at Monroe, July term, 1874.

JOHN FRANK PARGOUD *vs.* MRS. SARAH RICHARDSON. } No. 434. Order seizure & sale.

Appeal from 14th dist. court, parish of Ouachita.

To the honorable the judges of said court:

And now comes plaintiff in said above entitled, styled, and numbered proceeding, J. Frank Pargoud, and moves this honorable court to dismiss this appeal for the following reasons:

1st. That the appellant, Mrs. S. Richardson, did on the 5th day of April, 1873, obtain from the judge of the 14th judicial dist. court of Ouachita an order of opposition or injunction under art. 739, Code
34 of Practice, arresting the sale of the mortgaged property, which said opposition or injunction was tried and dissolved by judgment of the said district court at September term, 1873, from which said judgment defendant & appellant herein appealed to your honorable court, as will be seen by reference to case No. 433 on the docket thereof, entitled Sarah Richardson vs. B. H. Dinkgrave, sheriff, et al. Plaintiff and appellee herein shows that the order of seizure & sale arrested by said opposition or injunction No. 433 on appeal are the same as that in this case (No. 434), that the parties are the same, the objects sought to be obtained

the same, and the cause of action the same. Plaintiff further shows that by taking an appeal in said injunction or opposition now on file in your honorable court, No. 433, she, said appellant, lost all rights to an appeal from the order of seizure & sale which was so arrested by said suit No. 433 on the docket of your honorable court, v. Naughton vs. Dinkgrave, 25 An., 538.

2d. Plaintiff and appellee herein further shows that appellant is seeking, by taking this appeal, to compel your hon'l. court to decide the same case twice, since she has already appealed in of Richardson vs. Dinkgrave, No. 433 on the docket of your honorable court; and he avers
35 that defendant and appellant, Mrs. Sarah Richardson, should have set up all defences that she had in her injunction or opposition granted under act 739, C. P., and that she cannot be heard in this court in an appeal from the order of seizure & sale after having enjoined and arrested the sale under the same and appealed from a judgment dissolving the same.

For which reasons plaintiff & appellee moves this court to dismiss this appeal at the cost of defendant and appellant; & he prays for general relief, &c.

S. D. McENERY, *Att'y.*
COBB & GUNBY, *Att'ys.*

Filed July 8th, 1874. Jno. H. Dinkgrave, clerk s. c.

Assignment of errors.

Supreme court of Louisiana. Appeal from Ouachita.

JOHN FRANK PARGOUD *vs.* MRS. SARAH RICHARDSON. } No. 434. Assignment of errors.

In this case defendant and appellant, Mrs. Sarah Richardson, respectfully represents to the hon. supreme court that the following errors of law appear on the face of the record of these executory proceedings, to wit:

36 First. That the note of $10,400.00 annexed to the plaintiff's petition was not stamped with adhesive internal revenue stamps of the United States of America, at the date when this order of seizure and sale was rendered, and signed by the district judge or at any prior date, as is fully shown by the copy of said note on page 6 of the transcript; that the internal revenue laws of the United States of America, and particularly the provisions thereof relating to stamp duties and adhesive stamps—being the several acts of the Congress of the United States, approved July 1st, 1862 (12th U. S. Statutes at Large, page 432 et sequitur), July 14th, 1862 (same book, page); December 25th, 1862 (same book, page); March 3rd, 1863 (same book, page 725); June 30th, 1864 (30th United States Statutes at Large, page 223); March 3rd, 1865 (13th Statutes at Large, page 487); July 13th, 1856 (14th Statutes at Large, page); March 2nd, 1867 (14th Statutes at Large, page); April 10th, 1869 (16th Statutes at Large, page); July 14th, 1870 (16th Statutes at Large, page); which said several acts of Congress, as amended and modified by themselves in their successive order, were in full force and ef-

fect on the 27th day of December, A. D. 1871, the date of the said
37 note, and also on the 17th day of January, A. D. 1873, the date of the said order of seizure & sale, required that the said note should have had placed upon it, when it was executed, adhesive internal revenue stamps to the amount of five dollars and fifty cents, and duly cancelled according to said laws; that the said laws provided that the said note should not be admitted, received, or used as evidence in any court, unless at the time when offered as evidence it had affixed upon it the aforesaid amount of adhesive revenue stamps; that the said laws of the United States were constitutional, were the paramount laws of the land upon the subject-matter thereof, were binding upon the district court and the judge thereof, who received the said note as evidence and gave it effect as the basis of said order of seizure & sale; that the said laws are prohibitory and rendered null and void the action of said district court in receiving said note as evidence and in giving it effect; that the judicial action of said district court, in receiving said note as evidence and in giving it effect, was a decision against the validity of the said acts of Congress and was a decision against the constitutionality of said laws; and that the said action and decision
38 of said district court were erroneous and illegal, and that the order of seizure and sale, granted upon said note, and now on appeal before the hon. supreme court, should be annulled. Appellant farther shows that the absence of stamps upon said note is not supplied by stamps on act of sale & mortgage which as a sale is defici'nt in stamps fifty cents, and as a mortgage is deficient eleven $\frac{50}{100}$ dollars.

Second. That on the 3rd day of February, A. D. 1872, the maker & payee of said note, the defendant and plaintiff herein, appeared before the recorder, who passed the act of mortgage and endorsed upon said note a written agreement that the said note should be payable at the office of Ernest & Co., in New Orleans, which the said defendant and plaintiff signed, as shown by the record herein, page 6; that the plaintiff in his petition herein averred "due presentment of said note for payment, which was refused at the office of Ernest & Co., in the city of New Orleans;" that the said stipulation & the said averment are parts of plaintiff's suit, and are binding on him, and required authentic evidence in support of said averment; that no authentic or other evidence was presented
39 to the district court that payment of said note had ever been demanded at the office of Ernest & Co., in the city of New Orleans; that in executory proceedings it is required by law that such demand shall be proved by authentic evidence; and that the granting of said order of seizure and sale without such evidence of such demand was illegal and erroneous, and that said order should be annulled.

Third. That this is an executory proceeding, based upon an act of mortgage, and the essence of the suit and judgment, or order of seizure & sale, is the enforcement of the mortgage; that the enforcement of the mortgage is dependent entirely on its validity, and that the right to grant the said order of seizure and sale is dependent on the presentation to the court of legal and admissible authentic evidence of the existence of a legal and valid authentic mortgage; that the aforesaid acts of Congress require that each and every mortgage given as security for the payment of a definite sum of money exceeding $100.00 and not exceeding $500.00 shall be stamped with adhesive stamps of the value of fifty cents, exceeding $500.00 and not

exceeding $1,000.00, one dollar, and for every additional $500.00 or
40 fractional part thereof, fifty cents;" that the mortgage sought to be enforced in this suit was given as security for the payment of the definite & certain sum of twenty-eight thousand and four hundred dollars of money; that the said mortgage was required by said laws to be stamped with adhesive internal-revenue stamps of the United States to the amount of twenty-eight dollars and fifty cents; that the actual amount of such stamps affixed to said mortgage was only seventeen dollars, as shown by the endorsement thereon of the said recorder and covered by his official certificate and seal of office, page 10 of the transcript, and further, as shown by the certificate of H. Filhiol, the subsequent recorder, who furnished the copy of said mortgage which was presented to the district court in this case, transcript, page 11; that the said mortgage was thus proved to the district court to have been deficient in stamps to the amount of eleven dollars and fifty cents; that the aforesaid laws required and provided that the said mortgage should not be admitted, received, or used as evidence in any court unless at the time when offered as evidence it had affixed upon it the amount of twenty-eight dollars and fifty cents of adhesive rev-
41 enue stamps; that the said laws of the United States were constitutional; were the paramount laws of the land upon the subject-matter thereof, were binding upon the district court and the judge thereof who received the said mortgage as evidence and gave it effect as the essence of said order of seizure and sale; that the said laws are prohibitory, and rendered null and void the action of said district court in receiving said *said* mortgage as evidence and in giving it effect; that the judicial action of said district court in receiving said mortgage as evidence and in giving it effect was a decision against the validity of said act of Congress, and was a decision against the constitutionality of said laws; and that the said action and decision of said district court were erroneous and illegal; and that the order of seizure & sale granted upon said mortgage, and now on appeal before the hon. supreme court, should be annulled.

The defendant and appellant further respectfully represents that she assigns the foregoing errors as causes for this hon. court to annul the order of seizure & sale, from which she has appealed; she further
42 represents that the decision of this hon. court upon the said proceedings and assignment of errors draws in question the validity and constitutionality of said acts of Congress, which she prays may be held valid and constitutional.

Wherefore the defendant and appellant prays that the order of seizure & sale herein appealed from be annulled, and that the plaintiff and appellee be ordered to pay all the costs of these proceedings; and she prays for general relief.

MORRISON & FARMER,
Attorneys.

Petition for rehearing.

Supreme court of La., Monroe, July, 1874.

J. F. PARGOUD
vs.
SARAH RICHARDSON. } No. 434. Appeal from Ouachita.

To the hon'l' the supreme court of Louisiana:

The petition of the defendant and appellee with respect shows that the opinion and decree of the majority of the court is based on a misapprehension of the facts & are in violation of a prohibitory law.

The opinion and reasoning of the court on the first and third
43 objections to the evidence on which the order of seizure and sale issued will be grouped and discussed together. If on the first it is said that it was not necessary to stamp the note, "as the act accompanying the note was stamped" (by this we understand the court to mean the act of sale & mortgage annexed to plaintiff's petition praying for the order), if on an examination of the act accompanying the note it is found to be stamped, the above answer is complete; but if we find your honors are mistaken in the fact, and the act is not stamped, it is no sufficient answer. The act in question has a twofold character, the one an evidence of sale, the other evidence of a mortgage right. A sale of real estate requires to be stamped; that of personalty does not. It is not the sale that is in question. The pl'ff says he has a mortgage, and seeks to enforce it. This might be or not have been preceeded by a sale. Sale and mortgage are separate and distinct contracts, distinct acts, and having for their object different purposes. We dismiss the question of sale as not being involved, and confine ourselves to the mortgage. The question to be answered by the court is, was the act accompanying the note stamped
44 to make it receivable in evidence as a mortgage? To answer this question you must first determine what amount this mortgage was intended to secure, for that must determine the amount of stamps required. The act itself says it is to secure the payment of $28,400, in one note of $10,400 and four other in equal annual installments of $4,500 each. The plaintiff alleges that the payment of these notes is secured by the mortgage which "accompanies the note," & the fact is not denied. We then assume as true that the mortgage was given to secure that amount. The law requires "mortgages of lands, estates, real or personal, heritable or movable, whatsoever * * * given as security for the payment of any definite or certain sum of money exceeding $100 and not exceeding $500 shall be stamped with adhesive stamps of the value of fifty cents; exceeding $500 & no texceeding $1,000, $1.00; and for every additional $500 or fractional thereof, fifty cents."

The mortgage being to secure $28,400, under this provision of the internal-revenue law requires $28.50 worth of adhesive stamps, and this no matter whether the mortgage is given on real or personal property. So says the law. The only question being material is to ascertain the amount
45 to be secured by the mortgage. The mortgage was not given to secure $28,400, or it is not stamped. If it is not given to secure that sum, which of the notes or which two will the court reject? The

court says "the alleged insufficiency of the stamps is fifty cents." Is this statement in accordance with the allegations of the defendant? To ascertain this we look to the defendant's petition for an appeal, p. 27 & 8 of the record. She avers that said judgment or order was rendered without proper and sufficient evidence, for the reason the mortgage * * * was not stamped; * * that the law required it to be stamped with the value of one dollar for each $1,000 and fifty cents for every $500 or fractional part thereof, of the amount intended to be secured by said act of mortgage. In the assignment of errors filed it is alleged as error that the act of mortgage is not stamped as required by law.

These are the allegations. To ascertain the alleged insufficiency it is necessary to enquire what amount the law required should be placed on a mortgage to secure $28,400, and, second, what amount had been used on the *on the* act in question. We find the law demanding $28.50;
46 the response is, $17 have been used only; insufficiency, $11.50, & not "fifty cents." There is error in the facts stated in the opinion, which it is due to the court should be corrected. It is admitted that the act was not stamped with the amount of stamps required by law, in the opinion, by fifty cents, which we have seen is an error by the amount of $11. But suppose the majority opinion is correct, and that it is true that the insuf'iciency of the stamps is only 50c. The law is peremptory & prohibitory in its terms; it requires absolute obedience to its commands, and prohibits all the courts in the land, the high as well as the inferior, from receiving any instrument which is required by law to be stamped in evidence until said stamps have been placed on the instrument and cancelled. It has nowhere said the courts could abate or relax said law.

It was well said by Mr. Justice Howell that the stamp laws dealt with small amounts. This is true, many articles requiring only five cents, an instrument (certificate) requiring adhesive stamps of 5c. to be on it before it could be received in evidence. The absence of this stamp being made an objection to its reception, it has never occurred to any court be-
47 fore, we im*m*agine, that it would be an answer to the objection to say the alleged insufficiency is only five cents.

The law is either binding or it is not. It means what is says or it does not. If not, by what rule of interpretation that construction is given to it we are unable to discover. If it is the law, and we are to take the plain, unmistakable language as its meaning, there is no interpretation admitted, conceeding it to be the law. If not binding on the courts, why should it be upon the people? If this court has the power or the might (for it is clearly without the right) to disregard the law at its discretion, who is to limit that discretion. If this court enforces the law as a matter of discretion, is not that same judicial discretion vested in the district and parish courts? If your honors have the power to abate the law because the amount is only "fifty cents," whence is this power derived? Not from the law, surely. If the courts once supply their judgment or discretion for the law, they have no chart or compass, and litigants no security.

The court says virtually that the stamps were not necessary. "It
48 is the authentic evidence upon which an order of seizure & sale issues." If this be true and be confined to the limits of the term "authentic evidence" as defined by the law, and as understood by most of the courts & we believe the entire bar of the State, no stamps at all

were necessary. Your honors then say she has not adopted the remedy by which her injuries can be enquired into. This court has often held, and it is now the settled jurisprudence of the State, that the want of evidence can be taken advantage of only by appeal. (Naughton vs. Dinkgrave, & several cases since & before.) Suppose a man was sued on his note, not stamped. This court has said, whether objected to or not it was inadmissible, being contrary to a prohibitory law. A party applying for an order of S. & S. must present authentic evidence of his mortgage, and must present that in such a shape as to be receivable; if not, it cannot be considered. If considered by the court, his acts based upon that evidence are null, having received the evidence contrary to law. If your honors intended to say that the law requiring stamps was only to be partially enforced, why not fix the percentage the community will be permitted to retain out
49 of the stamps the law requires shall be used. Courts are created to administer the law as they find it; so this court has often said. If this be true, the mortgage in this case, not having been stamped according to law, is not usable under the law, and the order of seizure & sale should be annulled. The note was made payable in New Orleans, & not demanded there according to the agreement of the parties. "This agreement is not a stipulation in the act of sale & mortgage, but was added to the note sometime after its date, and authentic proof of a complyance cannot be required." This was no less an agreement between the from the facts of its being subsequent to the first. The parties were able to contract and did contract. Why are they not bound? No law nor article of the moral code prohibits parties from adding to or modifying their contracts; and courts should enforce all thus made. Wherefore the defendant prays this honorable court to grant her a rehearing, and that the order of seizure & sale be reversed, avoided, & annulled. She also prays for general relief.

MORRISON & FARMER, *Att'ys.*

Filed July 28th. Jno. H. Dinkgrave.

50 *Supplemental argument on petition for rehearing.*

Supreme court of La., Monroe, July, 1877.

J. FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } Appeal from Quachita.

Supplemental argument on petition for rehearing.

This case was decided July, 1874, by a bare majority of the supreme court. Justices Howell and Wiley dissented.

A petition for rehearing was at once filed, but has never been decided, for want of agreement of a majority of the court. There has never been a full bench of judges present since 1875. The question now before your honors is, shall a rehearing be granted?

In the consideration of that question the court manifestly cannot grant the order prayed for by plaintiff's counsel July 30th, 1877.

That motion and prayer are tantamount to an admission that the additional stamping therein alleged to have been made since July, 1874, was necessary to complete the validity of the mortgage and note, and that when the order of seizure & sale was granted the documents were not legally stamped, and were not when the supreme court decided this case.

51 The question is, was there sufficient authentic evidence before the district court to justify the order of seizure & sale foreclosing the mortgage?

The defendant was not present before the district judge, and had no opportunity to object to the evidence offered by plaintiff to the district judge, that evidence being the note and copy of the mortgage.

Plaintiff offered this evidence. The district judge received it, and, acting on it, granted the order of seizure & sale. When the district judge received that evidence he acted in disregard and in violation of the United States internal-revenue laws which were then in force. See Emerson's Internal Revenue Guide of 1867, page 156, sec. 163, act of Congress July 13, 1866, sec. 9, which reads thus: "And be it further enacted, That hereafter no deed, instrument, document, writing, or paper required by law to be stamped, which has been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded

52 or admitted or used as evidence in any court until a legal stamp or stamps denoting the amount of tax shall have been affixed thereto as prescribed by law."

It is thus manifest that the district judge was prohibited from receiving the note and copy of mortgage in evidence at all. His reception thereof as evidence, in violation of a prohibitory law, was null. (C. C. 12.)

The majority of the late supreme court said, "Here the evidence was authentic." This proposition is untenable.

First. An unstamped mortgage was not a mortgage. Therefore it could not be "authentic."

Second. An unstamped mortgage was not admissible at all as evidence of any kind. Therefore it could not be "authentic" evidence.

They also said: "If defendant was injured by the proceeding, she has not adopted the remedy by which her injuries could be inquired into."

This proposition is untenable. An injunction will not lie to prevent the execution of a judgment or order of seizure & sale on the ground that the evidence was illegally received. The only remedy is appeal.

53 Suppose plaintiff had sued via ordinaria to foreclose this mortgage, and had on the trial offered the note and mortgage in evidence, defendant would have objected on the ground that they were not legally stamped. The court would have been bound to reject them. If it had not, the supreme court would have rejected them on appeal.

Could the defendant in such case have enjoined the execution on the ground that the district judge erred in admitting the documents in evidence? Of course not. In executory proceedings a stricter compliance with the law is required.

The defendant is unrepresented and unheard. It is the duty of the district judge to protect the rights of the defendant against illegal evidence. If he does not the supreme court will do so on appeal.

When the district judge grants an order of seizure & sale he decides that he has before him sufficient legal evidence to authorize that decree.

It is absurd, then, to ask him, in an injunction suit against his own decree, to again pass upon that same question, and to decide that the
54 evidence was insufficient which he had solemnly adjudged to have been sufficient. Error in a judgment or order cannot be corrected by injunction. The remedy is appeal. (C. P., 564; 25 A., 539; C. P., 296 to 298; C. P., 739 & 740.)

Respectfully submitted.

W. W. FARMER, *Attorney.*

Opinion on motion to dismiss.

J. F. PARGOUD
vs.
MRS. SARAH RICHARDSON.

Appeal from the district court, parish of Ouachita, on motion to dismiss.

P. H. M., J. T. L., J. F. S.:

We are asked to dismiss this appeal on the following grounds:

1°. That by taking an appeal in the suit in which the appellant enjoined the order of seizure & sale from which the appeal is taken, appellant lost all right to appeal from the order.

2°. That by this appeal we are required to decide the same case twice, while it was the duty of the appellant to set up all her defences in the injunction suit. The grounds set up in the injunction suit are not the same as are presented in this case. The motion must therefore be denied.

55 *Opinion on the merits.*

ON THE MERITS.

It is first objected that the note sued on is not stamped. This was not necessary, as the act accompanying the note was stamped. It is next objected that the note was not presented at the place of payment at its maturity, according to the agreement of the parties. This agreement is not a stipulation in the act of sale and mortgage, but was added to the note some time after its date, and authentic proof of a compliance therewith cannot be required, as seems to have been considered necessary in the case of Moss vs. Byrne, 12 L., 615.

3°. The act of mortgage used as evidence to obtain the writ is not binding as a mortgage, & the courts are prohibited by the laws of the United States from admitting it in evidence because it is not stamped, as required by the internal revenue laws of the United States, and the evidence is otherwise insufficient to authorize the writ. The alleged insufficiency of stamps amounts to fifty cents. It is the authenticity of the evidence upon which an order of seizure & sale issues. Here the evidence was authentic. This being the case, the order properly issued. If the
56 defendant was injured by the proceedings, she has not adopted the remedy by which her injuries could be enquired into.

Judgment affirmed.

Dissenting opinion of Howell & Wyly.

J. F. PARGOUD
vs.
MRS. S. RICHARDSON. } No. 434. Dissenting opinion.

HOWELL, J.:

I cannot concur in the opinion of the majority on the third ground. The act is one of sale & mortgage for the price of $28,400, & has on it a stamp of $17, with the following memorandum endorsed on it: "The personal property is valued herein at $11,000, hence $17 worth of s'ps. C Delery, R." As a conveyance of realty, exclusive of the personalty, the stamps should be $17.50, and as to the personalty it should be stamped as a contract or agreement, i e., five cents a page (see series 6, No. 10, of 1871, regulations of Commissioner, p. 22); hence the instrument was not correctly stamped. It is said, however, the maxim "de minimis," &c., should apply. As there was an intention to comply with the law, & only a mistake occurred, we should consider the law complied with. The stamp laws treat specially & professedly of small sums, & if Congress has
57 the power in the premises, which is not denied, it has the right to require, as it has done, that the exact sum prescribed shall be paid under the conditions and consequences imposed. These small sums in the aggregate are of great importance as a matter of revenue, considering the extent of country & number of persons embraced within the operation of the laws. It is necessary that the utmost strictness and accuracy should be observed and enforced, otherwise the revenues would be seriously affected & the revenue law impaired or evaded. The law does not excuse mistakes in an effor' or intention to comply, any more than it does an intentional evasion. The consequences only differ. Provision is made for correcting mistakes & punishing evasions. The law declares what the consequence shall be if there is no stamp or one of the right sum. As to the question before us, the consequence in either contingency is that the instrument shall not be admissible as evidence, & this consequence attaches in this case, considering the act simply as a conveyance of realty or of realty and personalty.

But is it correct to so consider it? By our law the work-animals
58 & farming utensils are attached to the immovable, & becoming a part thereof are subject as such to the mortgage; and in this case the plaintiff asks that the whole property sold and affected by the mortgage (naming specially the animals & implements) be seized and sold under his mortgage, which is for $28,400. I think the term realty as used in this clause of the revenue act may well be held in this State to embrace all that is immovable by destination on a plantation sold. The law of each State determines what within it is realty or immovable. Under this construction the proper stamp is for $28.50. And if this construction is not adopted, the notes should be stamped, for the law says a note or bond given for a part of the consideration for realty sold & conveyed is not relieved from a stamp tax by the fact that a lien to secure the payment thereof is retained in the conveyance, unless the lien is stamped as a mortgage; and whenever any bond or note is secured by mortgage but one stamp duty is required thereon, such stamp duty being the highest rate required

for such instrument. (Series 6, No. 10, 1871, p. 20.) As the instrument in question embraced a conveyance & mortgage & the latter was
59 for the whole price, the stamp duty should be $28.50 to exempt the notes, on the hypothesis that the realty does not embrace the immovables by destination. That is, if the act was properly stamped as a conveyance of realty, the notes should have been stamped also, because the act included a mortgage for a larger sum than the alleged price of the realty. I think the memorandum on the margin, as contemplated by the law in such case, is not a correct one, & that there is a fatal error in the stamp, which made the act & notes inadmissible as evidence, & consequently the fiat of the judge was not authorized.

Mr. Justice Wyly concurrs in this dissenting opinion.

J. F. PARGOUD
v.
SARAH RICHARDSON. } 434. On motion.

T. C. M., R. H. M., A. D., W. B. S.:

The appellee moves for an order to the recorder of Ouachita Parish, commanding him to send up the original act of mortgage, a certified copy of which was produced before the judge of the lower court, as part of the evidence upon which he granted the order of seizure & sale. The
60 object of the motion as disclosed in it is to enable this court to ascertain from personal inspection of the act that it has now affixed to it all the U. S. internal revenue stamps that the act of Congress requires.

The motion is resisted on the ground that whatever quantity or amount of revenue stamps may be now upon the act, there were not enough of them upon it at the time the order of seizure & sale was made to give it validity, and that we can only consider its then condition. The motion is based on art. 917 of the Code of Practice, which empowers this court to direct orders to public officers to produce before it original papers when they may be necessary to the decision of a pending cause. We do not think the inspection of the paper in question is necessary to the decision of this cause, and we should do a vain and useless act in ordering its production before us; and therefore,

The motion is denied.

Dissenting opinion, W. B. E.

J. F. PARGOUD
vs.
MRS. SARAH RICHARDSON. } On motion for order to produce original document.

Egan, J.:

In my opinion the order prayed for should be granted. The plaintiff's motion sets forth that the production before this court of the origi-
61 nal paper is important to the determination of this cause. This is sufficient to entitle him to his order under the 917th art. of the Code of Practice. The question as to the effect of the document when produced, or whether it can have any effect upon the present appeal, are matters which do not come properly before us on this motion, but would be the sub-

ject of consideration when the appeal is heard. The granting of the order to produce could not affect the interests of the defendant if the paper could not be considered when produced; while on the other hand its production might be both necessary & proper if it could be considered on the appeal.

J. F. PARGOUD
vs.
SARA RICHARDSON. } On rehearing.

T. C. M., R. H. M., A. D., W. B. E., W. B. S.:

Pargoud sold the Ingleside plantation to Mrs. Richardson and retained the vendor's lien and a special mortgage to secure the payment of the purchase price. The first maturing note not having been paid, he obtained an order of seizure & sale of the property. This appeal is from that order. It was heard and decided four years ago (26 Annual, 672). The defendant prayed a rehearing, which was not acted on by our predecessors.

62 Two dissenting opinions were read, but are not published, maintaining the defendant's position of the invalidity of the mortgage for want of stamps. We found the case in that condition last year, and granted the rehearing. The vital question in the case is presented by the objection that neither the note nor the mortgage were valid or receivable in evidence for want of the U. S. internal revenue stamps required by the act of Congress. The note was unstamped. The mortgage had not as many stamps as the act required.

The plaintiff's counsel appears to rely upon that clause of the U. S. internal revenue law which permits the non-stamping a note when it is secured by a mortgage and the mortgage is properly stamped; and upon another clause which allows a mortgage which has not upon it the requisite quantity of stamps to be taken before a revenue officer and to be stamped by him with the additional number necessary under the law, which subsequent stamping validates it and makes it retroactive. To this the defendant's counsel replies that the appeal is from the order of the judge, made upon the evidence before him then, at the moment it was granted, and not upon the evidence as it might have been after-

63 wards transformed by the cabalistic touch of the revenue officer, and he argues that if the evidence in its then condition was insufficient to authorize the order of seizure & sale no subsequent addition to it, nor after care of its then inherent defects, could validate an order which was unlawful when it was made because the proper legal evidence was not before the judge when he made it. It is obvious there can be no evidence before us of any subsequent stamping of the mortgage, because the record contains only the evidence on which the judge a quo acted, and we have refused the plaintiff's motion to have produced the original act of mortgage from the recorder's office.

The whole of this dispute is to our minds outside the real question, which is whether any U. S. internal revenue stamps whatever must be affixed to a note or a mortgage in order to make it competent evidence in our State courts. Our convictions are very clear that none are necessary.

The argument made with great zeal and earnestness before us in support of the contrary proposition is that the Constitution of the U. States confers upon Congress the power to lay and collect taxes, duties,

64 imposts, and excises to pay the debts of the Federal Government, and in express terms makes that Constitution and the laws of the United States which shall be made in pursuance thereof the supreme law of the land, adding that the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. (Const., art. i, sec. 8, art. vi, sec. 2.) The conclusion drawn is that as Congress, in providing for the internal revenue of the General Government, required that notes and mortgages should be stamped, and punished the failure to comply with its mandate by prohibiting their reception as evidence in any court, and even by pronouncing their nullity, therefore every State court must enforce that law without question of its validity or of its proper application, being bound thereby.

By the same argument we should be compelled to use the trial by jury in every civil cause where the value in controversy exceeds twenty dollars (7th amendment to U. S. Const.), and we should be prohibited holding any one to answer for a capital or otherwise infamous crime, unless in a presentment or indictment of a grand jury (amendment). And yet we know that civil causes are, and have been, always tried in this State
65 without a jury, regardless of the value in controversy; and that persons are, and from the beginning of our State government have been, held to answer for many infamous crimes not capital upon an information filed by the prosecuting officer, and without the intervention of a grand jury.

Since Maurin v. Martinez, 5 Mart., 436, it has not been doubted that the provisions of the Federal Constitution relative to juries refer only to trials in the Federal courts, and do not apply to the State tribunals. And earlier than then it was held that the amendment to the Federal Constitution, which requires the intervention of a grand jury, relates only to crimes cognizable by the United States, and to criminal proceedings in its courts. (Territory vs. Halick, 2 Mart., 88.) When, then, the Congress prohibits a court from receiving in evidence any unstamped note or mortgage, we must assume that it has reference alone to the United States courts, as its prohibition is only obligatory upon them. It is said, however, that nothing is left to inference, since the act of Congress declares that these unstamped instruments are void; that an unstamped note, for instance, is not a
66 valid obligation, and its payment cannot be enforced. The construction of several of the State courts of this branch of that act is that the mere fact that the instrument is insufficiently stamped does not render such instrument invalid, but the intent to evade the act does. Sawyer v. Parker, 57 Maine, 39. And in a criminal prosecution it was ruled that the instrument was not void for the want of a stamp in such sense; that an indictment for its forgery would not lie. Cross v. People, 47 Ill., 152. It would seem that unstamped instruments, or instruments insufficiently stamped, are thus supposed to be valid or void, not because they have not stamps upon them, but only when the omission to affix them proceeds from a fraudulent intent; and in accordance with this idea, it was held that the subsequent affixing the stamp negatived the intent to evade the act. Craig v. Dimock, 47 Ill., 308. Not a safe or certain doctrine it would seem, but one born of a wish to recognize a doubtfull power, and at the same time to restrict it within such limits that its exercise would not infringe the authority of the State. It is not needful for us to consider

this act in any other aspect than its attempt to impose rules upon the State courts as to the admission of evidence. It is not within the province
67 of Congress to enact rules regulating the competency of evidence upon the trial of causes in a State court. The power to lay taxes is undoubted, but it is not broad enough to include the authority to declare that a written instrument of any kind shall not be received as evidence in a State court unless it is stamped. That is a restriction which appertains alone to the legislative authority of the State. In domestic transactions in no manner connected with the General Government, the State has the exclusive power to establish the rules of evidence in her own courts. And this conforms to the decisions of the highest courts in many of the States. Bowlin v. Commonwealth, 2 Bush. (Ky.), 5; Boston vs. Nichols, 47 Ill., 353; Hanford v. Obrecht, 49 Ill., 146; Clemens v. Conrad, 19 Mich., 170; Black v. Nettles, 25 Ark., 606. Our impression is that the same ruling has been made in Massachusetts and Maryland, but we have not now access to the authorities.

Our codes have authorized orders of seizure & sale to be made upon the production of the note evidencing the debt, and a certified copy of the authentic act of mortgage providing for its payment, and have defined an authentic act, Civil Code, art. 2231, new No. 2234, art's 3360, et
68 seq., new Nos. 3397 et seq.; Code of Practice, art's 61 et seq. The instruments offered in evidence by the plaintiff conform to the requirements of our law, and it is not necessary or proper to look beyond or outside of that law, to ascertain upon what evidence the judge could legally issue the order.

The only other ground of objection to the order was the note was made payable at a particular place, and no evidence in an authentic form was before the judge that the note had been presented at that place. It is now settled law that a mortgage, with a title importing a confession of judgment, may immediately seize the property, if in the hands of the debtor, without proof failure of payment. McDonough v. Fost, 1 Rob., 295. Neither the allegation nor proof of a previous demand for payment, or presentment at a particular place, is necessary to obtain executory process, although the note is payable at such place. Ripka v. Pope, 5 Annual, 61; Ibid., 187; McCalop v. Fluker, 12 Annual, 551; Stokes v. Forman, Ibid., 671; Catalogne v. Alva, 13 Annual, 98.

The judgment of our predecessors was an affirmance of that of the district court. We do not place ours upon the same grounds which
69 they did, but we reach the same conclusion.

It is ordered and decreed that the former judgment of this court remain undisturbed.

Extract from the minutes supreme court of La., July 9th, 1874.

J. F. PARGOUD
vs.
SARAH RICHARDSON. } 434.

Submitted on brief to be filed Saturday morning, July 11th, 1874.

Extract from the minutes, July 27th, 1874.

J. F. PARGOUD
vs.
MRS. SARAH RICHARDSON. } 434.

Judgment affirmed. Howell & Wyly dissenting.

Extract from the minutes, July 31st, 1877.

The judgment of the court was pronounced by Chief Justice Manning in the following case, in words following, to wit:

JOHN F. PARGOUD
vs.
MRS. SARAH RICHARDSON. } 434. Rehearing granted.

A rehearing of this cause is granted.

Extract from the minutes, July 3rd, 1878.

The judgment of the court was pronounced by Chief Justice Manning on motions in the following case, in words following, to wit:

JNO. FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } 434. On motion to produce mortgage.

70 The motion is denied. In this case Mr. Justice Egan dissented from the opinion of the court, for the reasons found in his separate opinion.

Extract from the minutes, July 5th, 1878.

JNO. FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } 434.

This case, having been fixed for trial for this day, was called in its regular order, taken up, and argued by R. G. Cobb, esq'r., for plintiffs, and by W. W. Farmer, esq'r., for defendant. The case was taken under advisement by the court upon the pleading and on the briefs on file and to filed Tuesday, 9th instant.

Extract from the minutes of July 13th, 1878.

J. FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } 434. On rehearing.

It is ordered and decreed that the former judgment of this court remain undisturbed.

71 *Petition for writ of error & order thereon.*

Supreme court of the State of Louisiana.

JOHN FRANK PARGOUD
vs.
MRS. SARAH RICHARDSON. } No. 434.

To the hon. the supreme court of the State of Louisiana:

The petition of John W. Scarborough, tutor of the minor Almira M. Richardson, a resident of the parish of Ouachita, State of Louisiana, with respect represents: That your hon. court rendered, on the 13th day of July, 1878, a final judgment in the suit in which John Frank Pargoud is plaintiff, and Mrs. Sarah Richardson, dec'd, but represented by petitioner as tutor of her only child and heir, is defendant, and which is No. 434 on the docket of this honorable court at Monroe.

That your petitioner is advised that there is manifest error to his prejudice in the said judgment; that this court is the highest court of law and equity in the State of Louisiana in which a decision can be had in the said suit; that in the said suit is drawn in question the validity and constitutionality of the internal-revenue law of the United States of America, and
72 particularly the provisions thereof relating to stamp duties and adhesive stamps, being the several acts of the Congress of the United States approved July 1st, 1862 (12th U. S. Statutes at Large, page 432 et sequitur); July 14th, 1862 (same book, page); December 25th, 1862 (same book, page); March 3d, 1863 (same book, page 725); June 30th, 1864 (13th U. S. Statutes at Large, page 223); March 3rd, 1865 (13th Statutes at Large, page 487); July 13th, 1866 (14th Statutes at Large, page); March 2d, 1867 (14th Statutes at Large, page); April 10th, 1869 (16th Statutes at Large, page); & July 14th, 1870 (16th Statutes at Large, page); and the decision is against the validity of the said acts of Congress and against the constitutionality of said laws, and that accordingly a writ of error lies from said final judgment to the honorable the Supreme Court of the United States.

Your petition'r further represents that he is advised that he is entitled to a writ of error in the premises, on giving bond in an amount to be fixed by this court, with good and sufficient security, conditioned that your petitioner, plaintiff in error, shall prosecute his writ to effect and answer all damages and costs if he fail to make his plea good; and that he is
73 ready and willing to give such bond, with security, according to law.

Wherefore petitioner prays that a writ of error may be allowed to him, returnable to the Supreme Court at Washington on the second Monday of October, A. D. 1880, and that a citation be signed to be served on the said

J. Frank Pargoud according to law, and returnable to the Supreme Court of the *Supreme Court of the* United States, upon petitioner's giving security as the law directs.

TALBOT STILLMAN, *of Counsel.*

It is ordered that a writ of error be allowed as prayed for in the foregoing petition, on petitioner giving bond, with good and solvent security, in the sum of five hundred dollars, conditioned according to law, said writ to be, and is hereby ordered, returnable to the hon. the Supreme Court of the United States, at Washington, D. C., on the second Monday of October, A. D. 1880, as the law directs.

At Opelousas, La., July 5, 1880.

E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.

Filed July 16th, 1880.

ROB. J. WILLSON,
Clerk S. Court La.

74 *Bond for writ of error.*

JOHN W. SCARBOROUGH, TUTOR, &C., PL'FF IN error,
vs.
JOHN F. PARGOUD, DEFENDANT IN ERROR.

Know all men by these presents that we, J. W. Scarborough, tutor of Almira M. Richardson, as principal, and Leon Gerson & Talbot Stillman, as sureties, are held and firmly bound unto John Frank Pargoud in the full and just sum of five hundred dollars, to be paid to the said Pargoud, or his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this day of July, in the year of our Lord one thousand eight hundred and eighty. Whereas lately at a session of the supreme court of Louisiana, holden in the city of Monroe, in a suit depending in said supreme court, wherein Mrs. Sarah Richardson, deceased, is defendant, and John Frank Pargoud plaintiff, judgment was rendered against the said Mrs. Sarah Richardson, defendant; and the legal representative of said defendant, through her tutor as aforesaid, having
75 obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Frank Pargoud, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the 2d Monday of October next: Now the condition of the above obligation is such that if the said J. W. Scarborough, tutor, shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN W. SCARBOROUGH, [L. S.]
Tutor of Almira M. Richardson,
Per TALBOT STILLMAN, *Agent.*
TALBOT STILLMAN. [L. S.]
S. GERSON. [L. S.]

Sealed and delivered in presence of—
Approved by me this fifth day of July, 1880.

E. BERMUDEZ,
Chief Justice Supreme Court Louisiana.

Filed July 16th, 1880.

ROB. J. WILLSON,
Clerk Supreme Court La.

76 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the State of Louisiana, before you or one of you, being the highest court of law or equity in the said State in which a decision could be had in the suit between John Frank Pargoud, plaintiff, and Mrs. Sarah Richardson, defendant, deceased, but represented by John W. Scarborough, tutor of her only child, Almira Richardson, a minor, wherein was drawn in question the validity and constitutionality of the internal-revenue laws of the United States of America, and particularly the provisions thereof relating to stamp duties and adhesive stamps, &c., and the decision of the said court was against the validity and constitutionality of the same, a manifest error hath happened, to the great damage of the said John W. Scarborough, tutor aforesaid, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you
77 send the record and proceeding aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of July, in the year of our Lord one thousand eight hundred and eighty.

F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Filed July 16th, 1880.

ROB. J. WILLSON,
Clerk S. Court La.

Citation.

United States of America to John Frank Pargoud, of the parish of Ouachita, Louisiana, greeting:

You are hereby cited and admonished to be and appear at a
78 Supreme Court of the United States, to be holden at Washington

on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at Monroe, wherein John W. Scarborough, tutor of the minor Almira M. Richardson, representing Mrs. Sarah Richardson, dece'd, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Sarah Richardson, deceased, in the suit entitled John Frank Pargoud vs. Mrs. Sarah Richardson, No. 434, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 5th day of July, in the year of our Lord one thousand eight hundred and eighty.

E. BERMUDEZ,
Chief Justice of the Supreme Court La.

Filed July 16th, 1880.

ROB. J. WILLSON,
Clerk Supreme Court La.

79 Supreme court of Louisiana, clerk's office, Monroe, 1880.

I, Robert J. Willson, clerk of the supreme court of the State of Louisiana, the highest court of law or equity of said State in which a decision could be had in the case hereafter mentioned, do hereby certify that the foregoing 78 pages contain a true, correct, and complete copy of all the pleadings, documents, and proceedings found in the transcript filed in this case on the 22nd January, 1874, in the case entitled John Frank Pargoud vs. Mrs. Sarah Richardson, order of seizure & sale No. of the docket of the 14th district court for the parish of Ouachita, from which the said case came on appeal to this court, and being No. 434 of the docket of this supreme court, and that the said copy of pleadings, documents, opinions, orders, petition for & writ of error, bond, citation, minutes of court, and other proceedings constitute a full and complete transcript of the records of said case, and that the judgment on appeal herein became final on the 13th July, 1878.

In testimony whereof I hereunto impress the seal of the said
80 supreme court of Louisiana and affix my official signature, at the city of Monroe, in said State of Louisiana, on this 18th day of August, A. D. (1880) eighteen hundred and eighty.

[SEAL.] ROB. J. WILLSON,
Clerk of the Supreme Court, at Monroe, La.

81 United States of America to John Frank Pargoud, of the parish of Ouachita, Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at Monroe, wherein John W. Scarborough, tutor of the minor Almira M. Richardson, representing Mrs. Sarah Richardson, dec'd, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Sarah Richardson, deceased, in the suit entitled

John Frank Pargoud vs. Mrs. Sarah Richardson, No. 434, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

82 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifth day of July, in the year of our Lord one thousand eight hundred and eighty.

E. BERMUDEZ,
Chief Justice of the Supreme Court of La.

Received this citation, together with a duplicate or true copy of the same, in my office, at Monroe, Louisiana, on the eleventh day of September, A. D. eighteen hundred and eighty, and on the same day, at the hour of ten o'clock in the morning, I made service of this citation on John Frank Pargoud, defendant in error, by handing the aforesaid duplicate or copy to Robert G. Cobb, in person, in the city of Monroe, parish of Ouachita, State of Louisiana, the said Cobb being the senior partner of the firm of Cobb & Gunby, attorneys at law, residing and practicing law in said city, and being one of the attorneys of record for the defendant in error,

83 John Frank Pargoud, as shown by the record now on file in the supreme court of the State of Louisiana, at Monroe, Louisiana, in the case entitled John Frank Pargoud vs. Mrs. Sarah Richardson, appeal'd to said supreme court from the fourteenth district court of the State of Louisiana in and for the parish of Ouachita, and the said John Frank Pargoud being absent from the State of Louisiana at the time of this service, and for more than three months prior thereto, and having no place of residence within this State known to me, and Samuel D. McEnery, the other attorney of record of the said Pargoud, being also absent from this State at the time of this service.

Witness my official signature, at Monroe, La., this September 11th, A. D. 1880, at half past ten o'clock a. m.

J. S. RAY,
D'p'y U. S. Marshall, District of Louisiana.

Marshall's fees for service, $1.00, paid.

(Indorsed:) Original. Supreme court of Louisiana. No. 434. John W. Scarborough, tutor, pl'ff in error, vs. John F. Pargoud, defendant in error. Citation. Filed July 16th, 1880. Rob. J. Willson, clerk s. c.

(Indorsed:) Sup. Court U. S. 1880, Oct. term. No. 887. Scarborough, tutor, &c., vs. Pargoud. Original citation & proof of service. Filed 29 Sept., 1880.

84 J. W. SCARBORO', TUTOR, PLAINTIFF IN error,
vs.
J. FRANK PARGOUD, DEFENDANT IN ERROR.

In the Supreme Court of the United States.

To the honorable the Chief Justice and the associate justices of the Supreme Court of the United States:

Almira M. Richardson, now a resident of the city of St. Louis, State of

Missouri, in whose behalf this writ of error was sued out by her tutor, John W. Scarborough, respectfully represents: That since the filing of this record she has attained the age of majority, and that she has married Edwin E. Shelby of the above residence.

And the said Edwin E. Shelby joins herein and makes himself a party hereto to authorize and assist his wife herein.

Your said plaintiffs in error respectfully represent unto your honors that the decision rendered in this cause by the honorable supreme
85 court of the State of Louisiana, from which this writ of error was sued out, is copied in full in the record before your honors.

Your plaintiffs in error respectfully assign the following as the vital errors in the aforesaid decision, to wit:

First. That the supreme court of the State of Louisiana, after first truthfully declaring that the note was unstamped and that the mortgage had not as many stamps as the act of Congress required, then erroneously held that no stamp whatever was necessary to be affixed to either the said note or mortgage to make either competent evidence in the State courts of Louisiana.

Second. That the supreme court of Louisiana declared that the internal-revenue act of Congress prohibiting the introduction of unstamped instruments in evidence had reference alone to the United States courts, and that its prohibition is obligatory only upon them, and that Congress did not intend to apply said law or prohibition to the State courts.

86 Third. That the said supreme court declared that if Congress did intend to apply said law and prohibition to the State courts that the act was unconstitutional, null, and void to that extent, because Congress has not the power to enact rules regulating the competency of evidence upon the trial of causes in a State court.

Fourth. That in carrying into effect the aforesaid erroneous constructions of the Constitution and laws of the United States the said supreme court admitted in evidence the said unstamped note and mortgage and affirmed the order of seizure & sale, whose validity and legality depended solely upon the validity and inadmissibility in evidence of the said note & mortgage.

Now, your plaintiffs in error respectfully represent that the said laws of the United States did intend to apply to the courts of all the States as well as those of the United States; that the prohibitions therein
87 contained were intended to bind all the State courts; that the said laws and prohibitions and the applications thereof to the State courts were constitutional; were the paramount laws of the land upon the subject-matter thereof; were binding upon the district court and the judge thereof who received the said note and mortgage as evidence, and gave them effect as the basis of said order of seizure and sale, and were binding upon the supreme court of the State of Louisiana, which affirmed said order of seizure & sale; that the said laws are prohibitory and rendered null & void the action of said district court and the action of the said supreme court; that the said judicial action was a decision against the validity of said acts of Congress known as the internal-revenue laws, and was a decision against the constitutionality thereof; that the said action and decision of the State, district, & supreme courts were erroneous and illegal, and that the said order of seizure & sale granted upon said

88 note and mortgage and now on writ of error before the honorable Supreme Court of the United States should be annulled.

Wherefore your plaintiffs in error pray that the decision of the supreme court of the State of Louisiana affirming said order of seizure & sale, and the decision of the district court of the State of Louisiana be annulled, avoided, & reversed; that the said order of seizure and sale be annulled, avoided, and reversed, and that the defendant in error be decreed to pay all the costs of these proceedings.

W. W. FARMER,
TALBOT STILLMAN,
Attorneys.

(Indorsed:) In the United States Supreme Court. Jno. W. Scarborough, tutor, pl'ff in error, vs. J. Frank Pargoud, def't in error. Assignment of errors.

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(Indorsement on cover:) No. 288. John W. Scarborough, tutor of Almira Richardson, minor, and only child of Mrs. Sarah Richardson, deceased, plaintiff in error, vs. John Frank Pargoud. Louisiana supreme court. Filed 29th September, 1880.

108-567

In the Supreme Court of the United States.

NO. 288.

JOHN W. SCARBOROUGH, Tutor of ALMIRA RICHARDSON, minor and only child of Mrs. SARAH RICHARDSON, deceased, Plaintiff in Error,

vs.

J. FRANK PARGOUD.

In Error to the Supreme Court of the State of Louisiana.

BRIEF FOR ALMIRA RICHARDSON, MINOR.

BULLETIN JOB PRINT, MONROE, LA.

In the Supreme Court of the United States.

JOHN W. SCARBOROUGH, Tutor, Plaintiff in Error,

vs.

J. FRANK PARGOUD, Defendant in Error.

Statement of the Case and Assignment of Errors.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Almira M. Richardson, now a resident of the city of Saint Louis, State of Missouri, in whose behalf this writ of error was sued out by her tutor, John W. Scarborough, respectfully represents that since the filing of this record she has attained the age of majority, and that she has married Edwin E. Shelby, of the above residence, and the said Edwin E. Shelby joins herein and makes himself a party hereto to authorize and assist his wife herein. Your said plaintiffs in error respectfully represent unto your Honors that the decision rendered in this cause by the Honorable Supreme Court of the State of Louisiana, from which this writ of error was sued out, is copied in full in the record before your Honors, and is to be found on pages 25, 26 and 27 of the transcript of record in this case. Your plaintiffs in error respectfully assign the following as the vital errors in the aforesaid decision, to-wit:

First—That the Supreme Court of the State of Louisiana, after first truthfully declaring that the note was unstamped and that the mortgage had not as many stamps as the act of Congress required, then erroneously held that no stamp whatever

was necessary to be affixed either to the said note or mortgage to make either competent evidence in the State Courts of Louisiana.

Second—That the Supreme Court of Louisiana declared that the Internal Revenue Act of Congress prohibiting the introduction of unstamped instruments in evidence had reference alone to the United States Courts, and that its prohibition is obligatory only upon them, and that Congress did not intend to apply said law or prohibition to the State courts.

Third—That the said Supreme Court declared that if Congress did intend to apply said law and prohibition to the State courts, that the act was unconstitutional, null and void, to that extent because Congress has not the power to enact rules regulating the competency of evidence upon the trial of causes in the State court.

Fourth—That in carrying into effect the aforesaid erroneous constructions of the Constitution and laws of the United States the said Supreme Court admitted in evidence the said unstamped note and mortgage, and affirmed the order of seizure and sale whose validity and legality depended solely upon the validity and inadmissability in evidence of the said note and mortgage. Now your plaintiffs in error respectfully represent that the said laws of the United States did intend to apply to the courts of all the States as well as those of the United States; that the prohibitions therein contained were intended to bind all the State courts; that the said laws and prohibitions and the applications thereof to the State courts were constitutional; were the paramount laws of the land upon the subject matter thereof; were binding upon the District Court and the Judge thereof who received said note and mortgage as evidence, and gave them effect as the basis of said order of seizure and sale, and were binding upon the Supreme Court of the State of Louisiana which affirmed said order of seizure and sale; that the said laws are prohibitory and rendered null and void the action of said District Court and the action of the said Supreme Court; that the said judicial action was a decision against the validity

of said acts of Congress known as the internal revenue laws, and was a decision against the constitutionality thereof; that the said action and decision of the State, District and Supreme Courts were erroneous and illegal, and that the said order of seizure and sale granted upon said note and mortgage and now on writ of error before the Honorable Supreme Court of the United States, should be annulled.

Wherefore, your plaintiffs in error pray that the decision of the Supreme Court of the State of Louisiana affirming said order of seizure and sale, and the decision of the District Court of the State of Louisiana, be annulled, avoided and reversed; that the said order of seizure and sale be annulled, avoided and reversed, and that the defendant in error be decreed to pay all the costs of these proceedings.

TALBOT STILLMAN, Attorney.

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TALBOT STILLMAN, Attorney.

ARGUMENT OF TALBOT STILLMAN.

May it please the Court:

Under Louisiana law this is known as an executory proceeding based upon an act of mortgage, and the essence of the suit and judgment, or order of seizure and sale, is the enforcement of the mortgage, and the enforcement of the mortgage is entirely dependent on the validity of the mortgage, and the right to grant the order of seizure and sale is dependent on the presentation to the Court of *legal and admissible authentic* evidence of the existence of a legal and *authentic mortgage*. See Louisiana C. P., Title "Executory Proceedings," Article 732, *et seq.*; Hennen's Digest of Louisiana Laws, Vol. 1, title Executory Process, page 646; and also Louque's Digest of Louisiana Laws, title, "Executory Process," page 288.

When this proceeding is taken the defendant is never present before the District Judge and has no opportunity to object to the evidence offered by plaintiff to said District Judge, but the law provides that "in proceedings *via executiva*, the creditor must bring himself within the letter of the law."

"A proceeding by which a party's property is summarily seized and sold without citation, is one of great severity, and cannot be extended beyond the case expressly provided by law. The formalities prescribed must be complied with." 2 La. Annual, 222, 522; 19 La. Annual, 141.

The Judge, in granting an order of seizure and sale, can take cognizance of none but authentic evidence. 7 La. Martin, 239; 1st La. Annual, 323; 4 La. Annual 152; 5 La. Annual 124; 8 La. Annual 117—and the authentic evidence must be complete, establishing *prima facie* the facts necessary to warrant the summary decree and execution.

And this authentic evidence is declared by Article 733 of the Louisiana Code of Practice to be any act importing a confession of judgment in matters of privilege and mortgage, passed before a notary public or other officer fulfilling the same functions, in the presence of two witnesses, the debtor acknowledg-

ing therein the debt for which he gives the privilege or mortgage. See also Articles 2234 *et seq*. La. Civil Code.

Now I maintain that the order of seizure and sale granted in this case was improvidently granted if tested by these well established rules.

Then what are the facts?

On the 17th of January, 1873, J. Frank Pargoud presented to the Judge of the 14th Judicial District Court, in and for the parish of Ouachita, La., in chambers, his petition, to which he annexed a note of Mrs. Sarah Richardson for $10,400, together with a certified copy of an act of sale, by himself to her, whereby it appears that, on the 27th of December, 1871, he sold her the Ingleside Plantation, a large and valuable cotton plantation in the parish of Ouachita, together with 42 mules and all the farming implements thereon, for the price of $28,400 —the note then sued on being the first installment of the purchase price. The balance of the price being represented by four other notes of $4,500 each, falling due respectively on the first of January, 1875, 1876, 1877 and 1878.

At this time and at the time of the execution of the note and mortgage, the internal revenue laws of the United States of America, and particularly the provisions thereof relating to stamp duties and adhesive stamps — being the several Acts of the Congress of the United States, approved July 1st, 1862, (12th United States Statutes at Large, page 432 *et seq*.) July 14th, 1862, (same book, page——), December 25th, 1862, (same book, page——), March 3, 1863, (same book, page 725), June 30th, 1864, (13th United States Statutes at Large, page 223), March 3d, 1865, (13th Statutes at Large, page 487), July 13th, 1866, (14th Statutes at Large, page——), March 2d, 1867, (14th Statutes at Large, page ——), April 10th, 1869, (16th Statutes at Large, page——), July 14th, 1870, (16th Statutes at Large, page ——), were in full force and effect, and required that the said note should have had placed upon it, when it was executed, adhesive inter-

nal revenue stamps, to the amount of five dollars and fifty cents, duly cancelled according to said laws.

Was the note stamped to the extent of said amount of $5.50 as required by law? Was it stamped at all? Let us look at this note on page 2 of the transcript. Your Honors now see that it bears no stamping whatever, and that it was never stamped to the extent of one farthing.

And now the act of sale which accompanied Pargond's petition let us refer to. This act of sale contains what purports to be an act of mortgage, given to secure the payment of the five notes representing the purchase price of the property conveyed. Such being the case, do not the same acts of Congress which required the stamping of the note require that each and every mortgage, given as security for the payment of a definite sum of money, exceeding $100 and not exceeding $500, shall be stamped with adhesive stamps of the value of fifty cents; any sum exceeding $500 and not exceeding $1000, one dollar, and for every additional $500, or fractional part thereof, fifty cents? If this inquiry is answered affirmatively and if this pretended mortgage was given as security for the payment of the definite and certain sum of twenty-eight thousand and four hundred dollars of money, it should have been stamped as was required by said laws with adhesive internal revenue stamps of the United States, to the amount of twenty-eight dollars and fifty cents.

To what extent was it stamped? The actual amount of such stamps affixed to said mortgage was only seventeen dollars, as shown by the endorsement thereon of the said Recorder and covered by his official certificate and seal of office, page 4 of the transcript, and further as shown by the certificate of H. Filhiol, the subsequent Recorder, who furnished the copy of said mortgage which was presented to the District Court in this case—see transcript, page 4.

Upon this note and copy of the act of sale containing the mortgage clause, and the prayer of the plaintiffs that the mortgage be made executory in all its parts; that an order of seizure

and sale be decreed of the mortgaged property, as described in the act of sale and mortgage, *for cash, to make $10,400 (the amount of the note then due) with eight per cent interest per annum thereon from 27th December, 1871, and costs. and on terms of credit to meet the falling due of the other notes*—the District Judge granted the order as prayed for.

From this *ex parte* order of seizure and sale Mrs. Richardson appealed for relief to the Supreme Court of the State of Louisiana, in the year 1874, alleging that the following errors appeared on the face of said executory proceedings, to-wit: That the stamp laws provided that said note and mortgage should not be admitted, received, or used as evidence in any Court unless at the time when offered as evidence they had affixed upon them the aforesaid amounts of adhesive revenue stamps; that the said laws of the United States were constitutional, were the paramount laws of the land upon the subject matter thereof, were binding upon the District Court and the Judge thereof, who received the said note and mortgage as evidence and gave them effect as the basis of said order of seizure and sale; that the said laws are prohibitory and rendered null and void the action of said District Court in receiving said note and mortgage as evidence and in giving them effect; that the judicial action of said District Court, in receiving said note and mortgage as evidence and in giving them effect, was a decision against the validity of said Acts of Congress and was a decision against the constitutionality of said laws; and that the said action and decision of said District Court were erroneous and illegal, and that the order of seizure and sale granted upon said note and then on appeal before the Hon. Supreme Court, should be annulled.

Appellant further showing that the absence of stamps upon the note is not supplied by stamps on act of sale and mortgage —which as a sale is deficient in stamps fifty cents, and as a mortgage is deficient eleven dollars and fifty cents. See this assignment of errors, transcript, page 15.

This Bench decided the case adversely to Mrs. Richardson

on the points presented by a bare majority; two of the Justices dissenting for the reasons given in their dissenting opinion, which opinion I copy at length at the end of this brief.

A petition for rehearing was at once filed, and the arguments made thereon are printed in full on pages 18 and 20 of the transcript of Record—but this application, for want of an agreement of a majority of that Court, was never acted on until a new bench was appointed in the year 1878, when this cause was finally decided by the Louisiana Supreme Court, from which decision, to be found on page 25 of the transcript of Record, Almira Richardson, minor, sued out her writ of error.

Having finished with my recital of the history of the case, as I know it, I now propose to argue it.

If the Court pleases—

What an abuse of language it is to say that evidence is authentic when it is null, that it is authentic evidence when it is prohibited from being any evidence.

What an abuse of thought it is, to say that any court has a right to decide that a certain instrument constitutes authentic evidence, when that court is prohibited from admitting it as evidence at all. The first act a court does is to admit, to receive the document as evidence. The next act is to judge of the character of that evidence and determine its effect. Manifestly, then, the judge cannot decree the instrument to have any effect, until he first admits it. If not admissible, he cannot do anything with it except to exclude it.

The evidence, which was received and used to decide this case, was not admissible, to-wit, the note and the mortgage. Not being admissible, the first act of the District Judge in admitting this note and mortgage, as any kind of evidence, was a nullity, and his second act, in deciding that they were authentic evidence, and his third act in decreeing that they formed the basis of the order of seizure and sale, were nullities.

Art. 12, La. Civil Code: "Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed."

Art. 10, La. Civil Code: "When to prevent fraud, or from any other motives of public good, the law declares certain acts void, its provisions are not to be dispensed with on the ground that the particular act in question has been proved not to be fraudulent, or not to be contrary to the public good."

Art. 20, La. Civil Code: "The distinction of laws into odious laws and laws entitled to favor, with a view of narrowing or extending their construction, cannot be made by those whose duty it is to interpret them."

The admission of the said note and mortgage as evidence was prohibited by the laws of the United States, to-wit:

"On and after the first day of August, 1864, there shall be levied, collected and paid, for and in respect of the several instruments, matters and things mentioned and described in the schedule (marked B) hereunto annexed, or for or in respect of the vellum, parchment or paper, upon which such instruments, matters or things, or any of them, shall be written or printed, by any person or persons or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued, the several duties or sums of money set down in figures against the same respectively, or otherwise specified or set forth in the said schedule." Act of Congress, June 30th, 1864, sec. 151, 13th Statutes at Large, page 291; Brightly's Digest of Laws, U. S. Vol. 2, page 263, paragraph 245.

	"SCHEDULE B."	"DUTY."
Par. 269....	"any promissory note....or other written or printed evidence of an amount of money to be paid on demand, or at a time designated, for a sum not exceeding one hundred dollars, five cents.....	5
	And for every additional hundred dollars or fractional part thereof in excess of one hundred dollars, five cents.....	5
Par. 277.—	"Conveyance, deed, instrument or writing, whereby any lands, tenements or other realty	

shall be granted, assigned, transferred or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his or her or their direction, when the consideration or value does not exceed five hundred dollars, fifty cents..... 50

When the consideration exceeds five hundred dollars and does not exceed one thousand dollars, one dollar..... 1 00

And for every additional five hundred dollars or fractional part thereof, in excess of one thousand dollars, fifty cents."..... 50

Par. 284.—"Mortgage of lands, estate or property, real or personal, heritable or movable, whatsoever, where the same shall be made as security for the payment of any definite and certain sum of money....exceeding one hundred dollars, and not exceeding five hundred dollars, fifty cents..... 50

Exceeding five hundred dollars and not exceeding one thousand dollars, one dollar..... 1 00

And for every additional five hundred dollars, or fractional part thereof, in excess of one thousand dollars, fifty cents"..... 50

Brightly's Digest, Laws, U. S. Vol. 2. pages 269, 270, 271; Act Congress, June 30, 1864.

"It shall not be lawful to record any instrument, document or paper required by law to be stamped, unless a stamp or stamps of the proper amount shall have been affixed; and the record of any such instrument upon which the proper stamp or stamps aforesaid shall not have been affixed, *shall be utterly void* AND SHALL NOT BE USED IN EVIDENCE." Act June 30th, 1864, sec. 152, 13th Statutes at Large, page 291—Brightly's Digest, Vol. 2, page 263, paragraph 246.

No instrument, document, writing or paper of any description, required by law to be stamped, shall be deemed or held

invalid and of no effect for the want of the *particular kind or description* of stamp designated for and denoting the *duty* charged on any such instrument, document, writing or paper, PROVIDED a legal stamp or *stamps*, denoting a duty of *equal amount*, shall have been duly affixed and used thereon. Act June 30th, 1864, sec. 153—Brightly, Vol. 2, page 263, paragraph 247.

Such instrument, document or paper, bill, draft, or *note* (without the same being duly stamped or having thereupon an adhesive stamp for denoting the duty chargeable thereon) shall be deemed invalid and of no effect. Act Congress, March 3d, 1865, sec. 1; 13th Statutes at Large, page 481; Brightly, Vol. 2, page 264, paragraph 252.

The remainder of this section provides how and when instruments, not properly stamped, may be subsequently stamped before being used—but these provisions have been modified or repealed by later laws.

"No deed, instrument, document, writing or paper, required by law to be stamped, which has heretofore been signed or issued without being duly stamped, or with a deficient stamp, nor any copy thereof, shall be recorded, or admitted, or used as evidence in any court, until a legal stamp or stamps, denoting the amount of duty, shall have been affixed thereto. Act June 30th, 1864, sec. 163; Brightly, Vol. 2, page 266, par. 257.

"Whenever any bond or note shall be secured by a mortgage, but one stamp shall be required to be placed on such paper; provided, that the stamp duty placed thereon shall be the highest rate required for said instrument or either of them." Act June 30th, 1864, sec. 160; Brightly, Vol. 2, page 265, paragraph 254.

It is easily seen from the foregoing that the stamps required on the mortgage in the present case were $28.50. The notes, if given by themselves, unsecured, would have required $14.20. But, had the mortgage been stamped at the "highest" rate, $28.50, the notes would have been dispensed from having any stamps on them. This exemption of the notes was conditional

This Honorable Court knows that the note sued on was not stamped and knows that the mortgage lacked $11.50 of sufficient stamps. There is nothing left but to enforce the law.

What a singular perversity of reasoning it is which leads to the conclusion that this note and mortgage are legally admissible as authentic evidence, and are authentic evidence in an order of seizure and sale, while they would not have been admissible at all, as any evidence, if offered the same day in an *ordinary* suit.

In other words, the logical deduction is bound to be made, if the theory of the Louisiana Supreme Court is adopted, that an instrument may be first rate *authentic* evidence of a confession of judgment, *strictissimi juris*, and yet be utterly worthless in an ordinary action. Such a construction elevates the Louisiana Executory Process above the Congress of the United States and abolishes the Internal Revenue Laws, by the operation of an *ex parte* decree. In Corrie vs. Billin, 23 La. Annual 251, the want of stamps, according to law, was objected to, the objection was sustained, the note was excluded and the plaintiff was non-suited. But, if Corrie had proceeded by executory process, Billin would not have been "there to see," could not have objected, the note would have been *authentic* evidence, must have been admitted and must have given plaintiff his order of seizure and sale.

An order of seizure and sale, so obtained, is not only "a clap of thunder from a clear sky," but is a bolt of lightning from out the azure vault of heaven.

What constitutes sufficient affirmative proof to the Court, in executory proceedings, that the original act of mortgage was duly stamped? The original is not submitted to the Court for inspection; the Recorder is its legal custodian. The evidence, shown to the Court that the original exists, is of record and is stamped, consists solely of the certificate and seal of the Recorder, its sworn custodian, that the document presented to the Court is a true copy of the original. The Court acts upon the certificate of the Recorder affixed to the copy.

There may be three ways in which the plaintiff may affirmatively show to the Court that the original is stamped:

1st. By actually copying the stamps themselves into or onto the certified copy, which is the proper and best way.

2d. By certifying, by embracing in his certificate, the specific declaration, that stamps of a certain named amount, are affixed to the original. The present plaintiff thought this the proper plan and had H. Filhiol, Recorder, to embrace such a declaration in his certificate, trans. of record, page 4.

3d. By the declaration being made, in the original act itself, that stamps of a certain amount are affixed to it. The original, being signed by the parties, witnesses and Notary, such a declaration, incorporated in it, would make proof of itself, which neither party could afterwards deny.

This view of the sufficiency of the affirmative proof was taken by the Supreme Court of Louisiana in the case of Garrish vs. Hyman, 29 La. Annual, page 28. The following is quoted from it:

"The second error assigned is the want of revenue stamps upon either act of sale and mortgage, or notes, and which are therefore alleged to be null and should not have been received in evidence."

"It is unnecessary for this Court to consider whether any such effect, even if the facts were as stated, as the copy of the act of mortgage in the record claims that the revenue stamps were affixed to the original act. This is all the law required, when the mortgage was stamped the notes were not required to be stamped."

That decision was concurred in by all the Justices of the Bench which finally decided this cause. I ask that the same principles be applied to this case. Here, the copy does not claim that the stamps were affixed to the original. Here the mortgage was not stamped, as required by law, and hence this note was not required to be stamped.

The demonstration seems to be complete, that this record totally fails to exhibit to the Court any form of affirmative

evidence that the required stamps were affixed to the original act. This omission would be fatal to plaintiff's executory order, even in the absence of the affirmative evidence, heretofore mentioned, thrt the original act was not stamped as required by law.

THE BURDEN OF PROOF IS ON PLAINTIFF.

No judgement or decree can be obtained by a plaintiff in any case, unless affirmatively "he prove his demand," not even in a default. "This proof is required in all cases." La. Code Practice, 312.

"When a party resorts to the summary and more severe remedies allowed by law, he is then held to a stricter compliance with every legal formality; and the executory process of seizure and sale, may be considered as one of severity. It is obtained *ex parte*, and all the proceedings under it are to be scrutinized closely." Lowry vs. Erwin, 6 La. Robinson 205.

In proceedings by seizure and sale, all the evidence must be in the form of authentic documents....The decree contains this expression: "By reason of the law and the evidence annexed to the foregoing petition, and of the law, it is ordered," etc. The petitioner recites the documents "on which he bases his prayer, for a decree, and describes them *seriatim* as annexed to the petition. The transcript before us contains all these documents. There cannot, therefore, be a doubt that it contains all the evidence upon which the decree was rendered; and it is our duty to determine whether this evidence justified the decree."

"The next objection of the appellant is, that the decree allows interest from the 1st March, 1841, instead of 4th March, 1841, making a difference of $3.56. This is a very trifling matter upon which to arrest the collection of a debt of several thousand dollars, and suspend the rights of the plaintiff for more than two years. But being insisted upon by the appellants, we are obliged to notice it. Executory proceedings are *ex parte*, and the seizing creditor must, at his peril, look to the accuracy of his demand and of the decree." Cumming vs.

Archinard, 1 La. Annual, 279 and 280. Affirmed, 6 La. Annual, 446.

"The executory process is a harsh remedy, and whoever resorts to it must make out a clear case, and bring himself within the letter of the law." Robb vs. Potts, 2 La. Annual 552.

LEGAL PRESUMPTIONS INAPPLICABLE TO EXECUTORY PROCEEDINGS.

"The proceeding by executory process, by which the property of the defendant, without citation, summarily seized and sold, is one of great severity, etc....and we are not prepared to say that, in an *ex parte* proceeding of this sort, the matter should have been left upon a legal presumption. The principle, so frequently recognized in our decisions, is one from which we are not disposed to depart, that all remedies by which, on *ex parte* orders, the property of a defendant is taken out of his hands, must be strictly construed." Spencer vs. Knowland, 2 La. Annual, 222 and 223.

EVIDENCE, INADMISSIBLE UNDER PROHIBITORY LAW, CANNOT BE CONSIDERED,

even if received in ordinary suit, without objection. Merz vs. Labuzan, 23 La. Annual, 747; Levy vs. DuBois, 24 La. Annual, 401; Baker vs. Pargoud, 26 La. Annual, 221.

The rule is stranger in executory proceedings, in which there is no opportunity given the defendant to object, in fact and in words, but in which the law itself raises in his behalf all legal objections to the evidence, received by the Judge.

DEFENDANT WAS NOT LIABLE FOR PRICE OF STAMPS.

Mrs. Richardson bought from Pargoud for a full price. She thought she bought a good title. It was his duty to convey such to her. The stamps required on that sale were the tax of the United States on that mode of contract, and were a condition precedent to his right to sell at all.

They were an incumbrance which he was as much required to remove as he would have been to remove a mortgage standing uncanceled on the land. It could as well be argued that it

is the duty of a man who smokes cigars to put the revenue stamp on the box. Stamps are not costs or expenses of a sale. They are the Government tax, excise, duty, or impost on the contract or paper upon which it is written. It might as well be argued that the vendee is bound to pay over and above the price, all the State taxes, due on the land he buys, as part of the incidental expenses of the sale.

Likewise, it was Pargoud's duty to stamp the note.

It was for his use and benefit. It was also his duty to stamp the mortgage. It was his security. Mrs. Richardson was not interested in giving it. He was interested in obtaining it. She did all she could be expected to do, when she gave the mortgage—without being required to pay for the tax on the privilege of giving it. Anti-Protectionists argue that "consumers" pay all import taxes. Well, Gen. Pargoud has consumed Mrs. Richardson's property.

It has been expressly held that the grantor is liable for the price of the stamps on the conveyance. Callagham vs. McCreedy, 22 Leg. Int., quoted in note (A.) at foot of page 270 —Brightly's Digest, Vol. 2.

But even were it a fact that Mrs. Richardson was liable for the stamps, that could not alter the question of the sufficiency of evidence in this case. It may be said that Mrs. Richardson was bound to sign the note sued on. Still, if she had not, in fact, signed it, the executory process could not issue on it. Executory process issues on actual evidence, existing facts—not on what the defendant might or ought to have done. The question is not, who ought to have stamped these instruments? But it is, were they lawfully stamped?

CONSTITUTIONALITY OF STAMP LAWS.

It is frequently said that Congress has no power to require the judges of State Court to act as internal revenue collectors. There is less wisdom and much less wit, in this remark, than in the remark of the man, who told the life insurance agent, that he "would not play at any game in which he had to die to

win." Yet some people think that the whole system of life insurance is utterly demolished by that remark.

Congress does not make any judge a revenue collector. It merely provides for certain specific duties, levied on contracts and obligations, and requires that duty to be paid by the use of stamps, just as the post office tax on a letter is paid by a stamp tax. It further provides that the presence of such a stamp, denoting payment of the tax shall be entered into the essential character, shall become an inherent ingredient of that contract, just as the stamp on the letter is necessary to constitute it a legal letter in the mail.

The Recorder or Notary under Louisiana law now existing, is not made a tax collector, because he is forbidden to pass an act of sale, until the taxes on the property are paid.

No good reason can be assigned and none has been ever attempted to show that Congress cannot levy a stamp duty or excise on contracts and obligations, as well as on a box of tobacco or barrel of whisky. This power is conceded and must be.

But the position has been assumed and has received the sanction of the Supreme Courts of some of the States (others holding to the vie vs which I maintain) that Congress, though it has the unquestioned excise or tax power over such instruments, cannot, *under guise of the exercise of that power*, interfere with or regulate the proceedings of State Courts and cannot prescribe, for States or State Courts, rules of evidence.

There would be some show of force in this proposition, if Congress had attempted or should ever attempt to do such an act. Can any man honestly declare that the object of the stamp laws was to interfere with State courts or to prescribe rules of evidence for them? Can any man honestly say that the object of the internal revenue laws was, not *bona fide* to collect money for the United States Treasury? Was there any guise or disguise about these laws? The Constitutional grant of power, to levy the excises, expressly requires them to be uniform throughout the United States. Any discrimination in

their amount, manner of collection, forfeitures, penalties, effect as evidence would be unconstitutional. Hence these laws must provide and do provide that the unstamped instruments shall not be evidence in any court. If the laws provided that these instruments should not be evidence in any State Court, they would be unconstitutional, because to be uniform they must also apply to United States Courts, also to all Courts. Likewise they would be unconstitutional, if limited by Congress to United States Courts, either directly or indirectly, expressly or by omission or by uncertainty of language.

It has been held by some of the State courts, which have admitted the Constitutionality of the stamp laws, that they did not apply by their terms to State courts and that Congress did not intend them so to apply.

Language cannot be more comprehensive than the words "in any court." No educated man can read the stamp laws and schedule B, new and old, without being convinced that it was the intention of Congress to apply them to State courts. How foolish it would have been for Congress to have prohibited United States Courts from receiving unstamped instruments in evidence and to have allowed State courts to have received them. The law would have been evaded, destroyed. All suits would have been instituted in State courts. Holders of unstamped instruments would sue therein. And, as unstamped instruments would thus have been enforced and would have been as valid and useful as others, the people would have ceased to stamp them.

Congress foresaw this and did not intend to allow it to be done. Ninety-nine of every hundred obligations are sued on in the State courts, as Congress well knew.

Congress has not prescribed rules of evidence for State courts. The law does not forbid the courts to receive notes, sales or mortgages in evidence. But it provides an element necessary to constitute what shall be a note, sale or mortgage. It provides that the thing, previously known in law as a note,

should thereafter possess one new constituent to render it a note, to-wit, a stamp; that it should thereafter not be valid, as a note at all, if the stamp was wanting. Hence it provided that an unstamped thing, purporting to be a note, should not be received in evidence, as a note. Not that a note was made inadmissible; but that an unstamped paper should not be a note and that the court could not receive it as a note to have the effect of evidence which a real note would have. This is not unconstitutional. It is a proper exercise of the constitutional power.

It has been uniformly held by State and Federal Courts that Congress has plenary power over a subject matter, when it has it at all. Thus, over postoffices, mails, etc.; over customs; over foreign commerce; over coinage; over bankruptcy, etc. The bankrupt law provides that a certificate of discharge shall be full proof in all Courts, etc. No one has ever contested this, as prescribing a rule of evidence for State Courts.

The penalty for fraudulent importation of dutiable articles, under U. S. Customs Laws, is forfeiture of the whole property imported. Likewise for fraudulently removing warehoused imported goods from any warehouse.

This seems extremely severe. It looks like oppression to take the whole of a thing, because duties, to the amount of twenty per cent of it have not been paid, but this is frequently done.

I have concluded my speech, if your Honors please, and I am better satisfied with my case than I have ever been, and at no time have I entertained the slightest doubt of winning it. Perhaps this may be due to the ardor of youth. At all events, your Honors, the points by me presented in my assignment of errors and in my brief, have never been presented to this Honorable Court for decision before now.

Doubtless often in argument before this Court counsel have used a familiar quotation to show what this Honorable Court

ought to do—which quotation I ask the Court to remember in deciding my case—

"Hew to the line, let the chips fall as they may."

Respectfully submitted,

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Attorney.

Dissenting Opinion by Justices Howell and Wyly of Louisiana Supreme Court.

J. F. Pargoud vs. Mrs. S. Richardson. } No. 434.

Howell, J., dissenting.

I cannot concur in the opinion of the majority on the third ground.

The act is one of sale and mortgage for the price of $28,400 and has on it a stamp of $17.00, with the following memorandum endorsed on it: "The personal property is valued herein at $11,000," hence $17 worth of stamps. C. Delery, R.

At a conveyance of *realty*, exclusive of the personalty, the stamps should be $17.50, and as to the personalty it should be stamped as a contract or agreement, *i. e.* five cents a page. See Series 6, No. 10 of 1871, Regulations of Commissioner, p. 22. Hence the instrument was not correctly stamped.

It is said, however, the maxim, *De minimus*, etc., should apply, and as there was an intention to comply with the law and only a mistake occurred, we should consider the law complied with. The stamp laws treat specially and professedly of small sums, and if Congress has the power in the premises, which is not denied, it has the right to require, as it has done, that the exact sum prescribed shall be paid under the conditions and consequences imposed. These small sums, in the aggregate, are of great importance as a matter of revenue, considering the extent of country and number of persons embraced within the operation of the laws. It is necessary that the utmost strictness and accuracy should be observed and enforced, otherwise the revenues would be seriously affected and the revenue laws impaired or evaded. The law does not excuse mistakes in an effort or intention to comply, any more than it does an intentional evasion. The law declares what the consequence shall be, if there is no stamp or one of the *right sum*.